

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 744

UNITED STATES OF AMERICA, APPELLANT,

vs.

INTERNATIONAL UNION UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN

INDEX

	Original	Print
Record from the United States District Court for the Eastern District of Michigan.....	1	1
Docket entries	1	1
Indictment	4	2
Appearance	11	7
Order extending time within which to move for bill of particulars or to raise defenses or objections....	12	7
Motion to extend time to move for bill of particulars or to raise defenses or objections	13	8
Affidavit of Harold A. Cranefield.....	15	8
Transcript of proceedings of July 29, 1955 on arraignment and plea	17	9
Notice of motion and motion to extend time to move for bill of particulars or to raise defenses and objections	30	15
Order extending time to move for bill of particulars or to raise defenses and objections	35	17
Motion to dismiss indictment	36	18
Notice of motion.....	38	19
Transcript of proceedings on motion to dismiss.....	43	20
Opinion of the Court, Picard, J.....	77	36
Appendix	88	44
Order dismissing indictment	89	45
Notice of appeal to the Supreme Court of the United States	90	46
Clerk's certificate..... (omitted in printing) ..	93	
Order noting probable jurisdiction	94	47

1

DOCKET ENTRIES

THE UNITED STATES

vs.

INTERNATIONAL UNION UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO)

Civ.: T. 18 USC (Rev) Sec. 610 as amended

(Federal Corrupt Practices Act)

Attorneys For U. S.: Fred W. Kaess, George E. Woods, 813 Federal Bldg., Det. 26, Simon E. Sobeloff, Dept. of Justice, Wash., D.C.

For Defendant: Harold A. Cranefield, 8000 E. Jefferson, Detroit 14, Norma Zarky, John Silard, Kurt Hanslowe, Redmond H. Roche, Jr.

1955

July 20. Indictment and Report filed.

July 29. Appearance filed.

July 29. Orr. has counsel, Harold A. Cranefield, pleads not guilty. Koscinski, J.

July 29. Motion and Order extending time within which deft. may move for Bill of Particulars or raise defenses or objections, filed and entered. Koscinski, J.

Aug. 3. Transcript filed.

Sept. 26. Motion to extend time within which deft. may move for Bill of Particulars or raise defenses and objections, filed. Hearing Sept. 26/55.

Sept. 26. Order extending time within which deft. may move for Bill of Particulars or raise defenses or objections, filed & entered. Picard, J.

2 Oct. 31. Motion to dismiss the indictment filed.

Nov. 2. Notice of Motion to dismiss filed—Hearing Dec. 12/55.

Dec. 9. Affidavit of service, filed.

Dec. 12. Hearing on motion to dismiss submitted with briefs to be filed by Jan. 16/56. Picard, J.

Dec. 22. Transcript filed.

2-3-56. Opinion of the court, filed and entered. Picard, J.

2-8-56. Order dismissing indictment filed and entered. Picard, J.

2-20-55. Notice of Appeals to U. S. Supreme Court, filed.

3-4 United States District Court, Eastern District of Michigan,
Southern Division

Viol: Title 18 USC (Rev.) Sec. 610 as amended.

(Federal Corrupt Practices Act)

UNITED STATES OF AMERICA, PLAINTIFF,

vs.

INTERNATIONAL UNION UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO),
DEFENDANT

INDICTMENT—July 20, 1955

Count One

The Grand Jury Charges:

1. That at all times herein mentioned, International Union United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), hereinafter called defendant, was a labor organization as defined in Title 18 United States Code (Revised), Section 610, and a labor organization, agency, and employee representation committee and plan, in which employees participated, and which existed for the purpose, in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work.

2. That on the third day of August, 1954, pursuant to the laws of the State of Michigan, a primary election within and for the State of Michigan was held to select candidates for United States Senator and Representatives in the Congress of the United States.

3. That on or about the ninth day of August, 1954, at Detroit in the State of Michigan, and within the jurisdiction of this court, defendant did knowingly and unlawfully make an expenditure from the general funds of said defendant labor organization in connection with the aforesaid primary election in which candidates for United States Senator, and Representatives in Congress were to be
5 selected in said State of Michigan, in the following manner and by the following means, that is to say:

That defendant expended the sum of One Thousand Four Hundred Seventeen Dollars and Fifty Cents (\$1,417.50) from its general Treasury fund, by paying said sum to Luckoff and Wayburn Productions, Detroit, Michigan, to defray the expense of preparation for and telecasting of political television broadcasts sponsored by defendant over Television Station WJBK-TV, Detroit, Michigan, in July, 1954, urging and endorsing the selection of certain persons to be candidates of the Democratic Party in Michigan for

Representatives in the Congress of the United States, which telecasts included expressions of political advocacy, and were intended by defendant to influence the electorate generally, including electors who were not members of defendant union, and to affect the results of said primary election.

4. That said expenditure of money mentioned in Paragraph 3 of this Count was from money taken out of the general fund of defendant and not from any other source; that said general fund consisted of union dues paid by members of the local unions belonging to and affiliated with defendant; that said expenditure was not made from voluntary political contributions, or from subscriptions of employee members belonging to and affiliated with defendant, and said expenditure for telecasts mentioned in Paragraph 3 of this Count was not paid for by advertising or sales, but was paid from defendant's general fund, which consisted of dues paid by defendant's dues-paying members, which fund was a fund separate and distinct from any fund established by voluntary contributions specifically earmarked for political purposes.

5. That the telecasts sponsored and paid for by defendant as mentioned in Paragraphs 3 and 4 of this Count were beamed on a commercial television station in which defendant had no financial interest, and were intended by defendant to be beamed to and received by, and were beamed to, and received by the general public, all in violation of Title 18 United States Code (Rev.), Sec. 610 as amended.

Count Two

The Grand Jury further charges:

1. The Grand Jury re-alleges all of the allegations of the first paragraph in the first count of this indictment.

2. That on the second day of November, 1954, pursuant to the laws of the United States and of the State of Michigan, a general election was held within and for the State of Michigan, at which, among others, a United States Senator, and Representatives in the Congress of the United States were to be voted for.

3. That on or about the thirteenth day of September, 1954, at Detroit in the State of Michigan, and within the jurisdiction of this court, said defendant did knowingly and unlawfully make an expenditure from the general funds of said defendant labor organization in connection with the aforesaid general election in which a United States Senator, and Representatives in the Congress of the United States were to be voted for, in said State of Michigan, in the following manner and by the following means, that is to say:

That defendant expended the sum of Seven Hundred Eight Dollars and Seventyfive Cents (\$708.75) from its general Treasury

fund, by paying said sum to Luckoff and Wayburn Productions, Detroit, Michigan, to defray the expense of preparation for and telecasting of a political television broadcast sponsored by defendant and over Television Station WJBK-TV, Detroit, Michigan, in August, 1954, urging and endorsing the election in Michigan of the candidates of the Democratic Party for United States Senator, and Representatives in the Congress of the United States, which telecast included expressions of political advocacy, and was intended by defendant to influence the electorate generally, including electors who were not members of defendant union, and to affect the results of said election.

7 4. That said expenditure of money mentioned in Paragraph 3 of this Count was from money taken out of the general fund of defendant and not from any other source; that said general fund consisted of union dues paid by members of the local unions belonging to and affiliated with defendant; that said expenditure was not made from voluntary political contributions, or from subscriptions of employee members belonging to and affiliated with defendant, and said expenditure for a telecast mentioned in Paragraph 3 of this Count was not paid for by advertising or sales, but was paid from defendant's general fund, which consisted of dues paid by defendant's dues-paying members, which fund was a fund separate and distinct from any fund established by voluntary contributions specifically ear-marked for political purposes.

5. That the telecast sponsored and paid for by defendant as mentioned in Paragraphs 3 and 4 of this Count was beamed on a commercial television station in which defendant had no financial interest, and was intended by defendant to be beamed to and received by, and was beamed to, and received by the general public, all in violation of Title 18 United States Code (Rev.), Sec. 610 as amended.

Count Three

The Grand Jury further charges:

1. The Grand Jury re-alleges all of the allegations contained in the first paragraph of Count One, and the second paragraph of Count Two of this indictment.

2. That on or about the fifth day of October, 1954, at Detroit in the State of Michigan, and within the jurisdiction of this court, said defendant did knowingly and unlawfully make an expenditure from the general funds of said defendant labor organization in connection with the aforesaid general election in which a United

8 States Senator, and Representatives in the Congress of the United States were to be voted for, in said State of Michigan, in the following manner and by the following means, that is to say:

That defendant expended the sum of One Thousand Three Hun-

dred Thirtyeight Dollars and Seventyfive Cents (\$1,338.75) from its general Treasury fund, by paying said sum to Luckoff and Wayburn Productions, Detroit, Michigan, to defray the expense of preparation for and telecasting of political television broadcasts sponsored by defendant over Television Station WJBK-TV, Detroit, Michigan, in September, 1954, urging and endorsing the election in Michigan of the candidates of the Democratic Party for United States Senator, and Representatives in the Congress of the United States, which telecasts included expressions of political advocacy, and were intended by defendant to influence the electorate generally, including electors who were not members of defendant union, and to affect the results of said election.

3. That said expenditure of money mentioned in Paragraph 2 of this Count was from money taken out of the general fund of defendant and not from any other source; that said general fund consisted of union dues paid by members of the local unions belonging to and affiliated with defendant; that said expenditure was not made from voluntary political contributions, or from subscriptions of employee members belonging to and affiliated with defendant, and said expenditure for telecasts mentioned in Paragraph 2 of this Count was not paid by by advertising or sales, but was paid from defendant's general fund, which consisted of dues paid by defendant's dues-paying members, which fund was a fund separate and distinct from any fund established by voluntary contributions specifically ear-marked for political purposes.

9 4. That the telecasts sponsored and paid for by defendant as mentioned in Paragraphs 2 and 3 of this Count were beamed on a commercial television station in which defendant had no financial interest, and were intended by defendant to be beamed to and received by, and were beamed to, and received by the general public, all in violation of Title 18 United States Code (Rev.), Sec. 610 as amended.

Count Four

The Grand Jury further charges:

1. The Grand Jury re-alleges all of the allegations contained in the first paragraph of Count One, and the second paragraph of Count Two of this indictment.

2. That on or about the twelfth day of November, 1954, at Detroit in the State of Michigan, and within the jurisdiction of this court, said defendant did knowingly and unlawfully make an expenditure from the general funds of said defendant labor organization in connection with the aforesaid general election in which a United States Senator, and Representatives in the Congress of the

United States were to be voted for, in said State of Michigan, in the following manner and by the following means, that is to say:

That defendant expended the sum of Two Thousand Five Hundred Twenty Dollars (\$2,520.00) from its general Treasury fund, by paying said sum to Luckoff and Wayburn Productions, Detroit, Michigan, to defray the expense of preparation for and telecasting of political television broadcasts sponsored by defendant over Television Station WJBK-TV, Detroit, Michigan, in October, 1954, urging and endorsing the election in Michigan of the candidates of the Democratic Party for United States Senator, and Representatives in the Congress of the United States, which telecasts in-

cluded expressions of political advocacy, and were intended by defendant to influence the electorate generally, including electors who were not members of defendant union, and to affect the results of said election.

3. That said expenditure of money mentioned in Paragraph 2 of this Count was from money taken out of the general fund of defendant and not from any other source; that said general fund consisted of union dues paid by members of the local unions belonging to and affiliated with defendant; that said expenditure was not made from voluntary political contributions, or from subscriptions of employee members belonging to and affiliated with defendant, and said expenditure for telecasts mentioned in Paragraph 2 of this Count was not paid for by advertising or sales, but was paid from defendant's general fund, which consisted of dues paid by defendant's dues-paying members, which fund was a fund separate and distinct from any fund established by voluntary contributions specifically ear-marked for political purposes.

4. That the telecasts sponsored and paid for by defendant as mentioned in Paragraphs 2 and 3 of this Count were beamed on a commercial television station in which defendant had no financial interest, and were intended by defendant to be beamed to and received by, and were beamed to, and received by the general public, all in violation of Title 18 U.S.C. (R.C.), Sec. 610 as amended.

A True Bill.

EDWARD L. HOLMES,
Foreman.

TOM DEWOLFE,
Special Assistant to the Attorney General.
WILLIAM A. PAISLEY,
Special Assistant to the Attorney General.

FRED W. KAESS,
United States Attorney.

GEORGE E. WOODS,
Chief Asst. U. S. Attorney.

11 [File endorsement omitted]

In the District Court of the United States for the Eastern District
of Michigan, Southern Division

APPEARANCES—Filed July 29, 1955

(Title omitted)

To the Clerk of the Court:

Please enter my appearance as Attorney for Defendant International Union, etc., in the above entitled cause.

Dated: Detroit, Michigan, July 29, 1955.

HAROLD A. CRANEFIELD,
8000 E. Jefferson Ave.,
Detroit 14, Mich.,
LO 8-4000

12 [File endorsement omitted]

United States District Court, Eastern District of Michigan,
Southern Division

(Title omitted)

ORDER EXTENDING TIME WITHIN WHICH DEFENDANT MAY MOVE
FOR BILL OF PARTICULARS OR RAISE DEFENSES OR OBJECTIONS.—
July 29, 1955

The motion of defendant in the above-entitled cause for an extension of time within which to make certain motions under Rules 7 and 12 of the Federal Rules of Criminal Procedure came on to be heard this 29th day of July, 1955 on the affidavit of Harold A. Cranefield, attorney for the said defendant and thereupon, upon consideration thereof, it was

ORDERED—that the time within which defendant may move for a bill of particulars under Rule 7 of the Federal Rules of Criminal Procedure be and the same hereby is extended to September 30, 1955, and it is

FURTHER ORDERED—that the time within which the defendant may raise defenses and objections otherwise required by Rule 12 of the Federal Rules of Criminal Procedure to be raised before entry of plea be and the same hereby is extended to September 30, 1955.

Dated: July 29, 1955.

District Judge.

13 [File endorsement omitted]

United States District Court, Eastern District of Michigan,
Southern Division

[Title omitted]

MOTION TO EXTEND TIME WITHIN WHICH DEFENDANT MAY MOVE
FOR BILL OF PARTICULARS OR RAISE DEFENSES AND OBJECTIONS
REQUIRED BY RULE 12 TO BE RAISED BEFORE PLEA—Filed July 29,
1955

Comes now International Union, United Automobile, Aircraft
and Agricultural Implement Workers of America (UAW-CIO), the
defendant in the above-entitled cause, by Harold A. Crane-
field, its attorney and moves the Court:

1. that the time within which the said defendant may move
for a bill of particulars under Rule 7 of the Federal Rules of
Criminal Procedure be extended to September 30, 1955;

2. that the time within which the said defendant may raise
defenses and objections otherwise required by Rule 12 of the
Federal Rules of Criminal Procedure to be raised before entry
of plea be extended to September 30, 1955;

14 This motion is based on the affidavit of Harold A. Crane-
field attached hereto and made a part hereof.

Dated this 29th day of July, 1955.

HAROLD A. CRANEFIELD,
Attorney for Defendant.

15 United States District Court, Eastern District of Michigan,
Southern Division

[Title omitted]

AFFIDAVIT IN SUPPORT OF MOTION TO EXTEND TIME

UNITED STATES OF AMERICA,
Eastern District of Michigan,
Wayne County, ss.

Harold A. Crane-
field, being first duly sworn, deposes and says:

1. that he is attorney for the defendant in the above-entitled
prosecution and resides in the City of Detroit, Michigan;

2. that defendant is a voluntary unincorporated association;
that deponent is General Counsel for the defendant and as such is
charged with the general supervision of the representation of de-
fendant in all legal matters and in all actions, civil or criminal, to
which defendant is a party;

3. that the indictment in this prosecution was returned on July 20, 1955, on which day deponent was in Madison, Wisconsin on the affairs of the defendant; that deponent was unable to return to his office in Detroit until July 22, 1955;

4. that the Supreme Court of the United States expressed doubt in the case of *United States v. Congress of Industrial Organizations*, 335 U. S. 106, as to the constitutional validity of applying the statute under which the indictment in this prosecution is laid to facts similar to those alleged in this indictment; that the indictment raises constitutional questions of great importance to all labor organizations, corporations, and political organizations and to the nation, generally; that additional time is required by deponent, particularly in view of the seasonal unavailability of many persons from whom information and counsel is desired in order to determine whether any motions under Rule 7 (f) or Rule 12 (b) (2) of the Federal Rules of Criminal Procedure ought to be made in the interest of insuring that the constitutional questions involved are fully and fairly presented on the trial of this cause.

HAROLD A. CRANEFIELD

Subscribed and sworn to, before me this 29th day of July, 1955.

MIRIAM LEE,

Notary Public, Wayne County, Michigan.

My commission expires 12-10-56.

17 In the District Court of the United States for the Eastern District of Michigan, Southern Division

[Title omitted]

Transcript of Proceedings of July 29, 1955 on Arraignment and Plea

Proceedings had before Honorable Arthur A. Koscinski, District Judge, Detroit, Michigan, Friday, July 29, 1955, at the time of arraignment:

APPEARANCES:

George E. Woods, Assistant United States Attorney, Appearing for the United States.

Harold A. Cranefield, Attorney, appearing for defendant.

18 **The Court:** United States versus International Union, United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO).

Mr. Woods: This, your Honor, is an arraignment on an indict-

ment. The International Union of United Automobile Workers is represented by Mr. Harold Cranefield, general counsel.

The COURT: I take it that you have a copy of the indictment?

Mr. CRANEFIELD: We have a copy of the indictment, your Honor.

The COURT: What is the plea?

Mr. CRANEFIELD: If the Court will permit, I should like, before proceeding with the plea, to file a motion. I have provided the District Attorney with a copy. I will ask the Clerk to hand it up.

The COURT: Just a minute. At this stage of the proceeding it is premature to file a motion. After the plea is entered today, the case goes to the Clerk's office, where, under the system established there some years ago, it goes to one of the six Federal judges in this court. At this moment it is not known which of the six judges will have the case. So that, I would suggest, counsel, that you withhold filing the motion until we find out which judge it is.

Mr. CRANEFIELD: If the Court would permit me to explain the nature of the motion, I believe the Court will agree that it would be properly entertained now, and by your Honor.

19 The COURT: All right.

Mr. CRANEFIELD: Under Rule 7 of the Federal Rules of Criminal Procedure, a motion for a bill of particulars is required to be filed within ten days after arraignment, as your Honor is aware.

Under Rule 12 (b), certain objections and exceptions, defenses, objections to the indictment, and certain defenses, must be interposed before plea.

I have solicited from the District Attorney a stipulation that our time might be extended within which to file a motion for a Bill of Particulars, or to raise some of those defenses or objections.

I am aware that under the rules the Court may, in its discretion, entertain a motion for a bill of particulars, or receive some of the defenses or objections to the indictment, notwithstanding the lapse of time. But, that requires a particular showing of cause. What I have here is a motion, supported by my affidavit, merely extending the time to September 30, 1955, within which we may file a Bill of Particulars, even though that will be more than a motion for a bill of particulars, and even though that will be more than ten days after arraignment, and extending the time within which we might make certain objections to the indictment, to the same date.

The COURT: Mr. Cranefield, couldn't that be done just as well later? It can be done in a few minutes, just as soon as the
20 Clerk here takes the file back to the Clerk's office, and ascertain which of the judges is going to handle this case, and then you file your motion there.

Mr. CRANEFIELD: But, your Honor, I am confronted by the specific provision of Rule 12 (b), that those defenses are waived, if not interposed before arraignment, before plea.

The COURT: All right. Let me see them.

Mr. CRANFIELD: Rule 12 (b), paragraph 2, your Honor, states that they are waived unless interposed before plea.

I am at a loss to understand the District Attorney's reluctance to stipulate.

That is 12 (b), sub-paragraph 2.

The COURT: Well, which sub-division under paragraph (b) do you refer to?

Mr. CRANFIELD: Sub-paragraph 2, of 12 (b).

The COURT: All right. Give me a moment to read that.

Mr. CRANFIELD: Yes, sir.

(The Court examines rules.)

The COURT: As I read it, it may be raised only by motion before trial. Is that what you stress?

Mr. CRANFIELD: The time is fixed by sub-paragraph 3. I should have directed your attention also to sub-paragraph 3.

(Court further examines rules.)

The COURT: Did they enter a plea here?

Mr. WOODS: Sir?

21 The COURT: Has the plea been entered?

Mr. WOODS: The plea has not been entered, no, sir.

The COURT: Under sub-division 4, it reads:

"A motion before trial, raising defenses or objections, shall be determined before trial, unless the court orders that it be deferred for determination at the trial of the general issue."

Mr. CRANFIELD: I do not propose, your Honor, by my motion to interpose any objection to the indictment, or any special defense at this time. I seek relief only from the time limitations. I seek only your order extending the time to September 30 within which we may interpose the kind of objection contemplated by Rule 12, and extending also the time within which we may file a motion for a bill of particulars, which, under Rule 7, will expire ten days after arraignment.

Mr. WOODS: Except, your Honor, under both Rule 7 and Rule 12, the Court upon good cause being shown, can extend that time. And we assume that if counsel contemplates filing such a motion, he would—

The COURT: Let me say this, that in this case, I do not think either myself or any other judge in this court is going to hasten unduly a decision in the case. I think the case will receive very careful consideration by every judge or any judge of this court.

22 Mr. CRANFIELD: I have no fears on that score, your Honor.

The COURT: There are questions involved that are very important to the defendant, not only to the defendant in this case, but to many other citizens of the country. And, I think it is to the interest of anybody now concerned, or who will hereafter be concerned with matters of a similar nature, to get a definite and final ruling on the questions involved here.

Now, I will consent that this matter has never been raised in a criminal case in that way. I would prefer that you——

Mr. CRANFIELD: Have you examined my motion, your Honor?

The COURT: No.

Mr. CRANFIELD: If you will look at it, you will find that it is brief. I will hand it up to you. Do you have it there?

The COURT: No, I have the indictment here. That is all I have.

(Mr. Cranfield hands document to the Court.)

The COURT: Then, I take it from that, Mr. Cranfield, that these matters must be raised before any plea is entered.

Mr. CRANFIELD: Under Rule 12 (a), your Honor, as I read it, the entry of a plea forecloses us from raising any kind of
23 an objection or defenses outlined in that rule.

The COURT: Are there any court rules on this? Did you check that?

Mr. CRANFIELD: No, your Honor. I have not looked at the decisions.

The COURT: Have you?

Mr. WOODS: I have not checked that, your Honor, previous to this hearing, for the purpose of this hearing.

Mr. CRANFIELD: Have you any objection to the motion?

Mr. WOODS: I think you are permitted to ask for an extension of time for a bill of particulars, under the rule, within ten days after arraignment.

The COURT: I could extend the time for filing a bill of particulars. In both civil and criminal cases, the purpose of the law is to get the case at issue at an early time. In civil cases we often find that there is a long time elapses before a case comes to issue, because of preliminary proceedings. Now, I do not think anything will be lost here by anybody by granting this motion. We know they will be here.

Mr. WOODS: Oh, yes.

The COURT: I think their word would be acceptable to you, that they will be here.

Mr. WOODS: Yes.

24 The COURT: So, it is not a question of some individual who wants a long delay, and then who possibly may not show

up at the time, which has happened from time to time in the history of this court. But, here is an organization, which is a very solid organization, and certainly it is going to be here in thirty days, or sixty days, or whatever time we set.

Mr. WOODS: Yes. But we would hesitate, of course, to stipulate to do this, because, if we do, then it might be said that the Government has waived something, and has then precluded itself from raising the issue at a later time.

We do not anticipate that the motion is not going to be filed in good faith, certainly. But, we do not want to be foreclosed as to any of our rights.

The COURT: If counsel conceives his duty to be to ask for a bill of particulars within a certain period of time, after this is filed, and if I thought he might be mistaken, I mean—I am not saying he is at this time—but I would rather prolong the time, rather than to act hastily in the matter, and I think under the circumstances that nobody will be hurt if the motion is granted.

Mr. CRANFIELD: I have prepared a short order, your Honor (handing paper to court).

The COURT: Very well.

Mr. WOODS: I assume then, your Honor, that the extend-
25 ing of the time within which they may move for a bill of
particulars applies also to defenses or objections to the in-
dictment, that would be required by Rule 12, is that correct?

The COURT: Yes, as required by Rule 12.

Mr. WOODS: The rule certainly holds them to make a motion as indicated within ten days after arraignment. Rule 12 covers the matter of time within which to file defenses and objections to the indictment.

Mr. CRANFIELD: I will say, your Honor, that I have no present intention of raising the type of defenses or objections as dictated in Rule 12. But I would prefer not to be foreclosed by the entry of a plea.

The COURT: The Court will rule on that now. If, as a result of the Court's granting of the order to the defendant just now it will appear that the Government will be placed in a situation where it will lose, or stand in danger of losing some rights under Rule 12, or any other rules of the criminal procedure, then, let it be stated on the record, and you may bring in such an order that the time will be extended for the Government, and for the same time that the Court is now extending the time for the defendant, and the time will be extended for the Government, the same time. Is that satisfactory?

Mr. WOODS: Yes, as long as we lose no rights along that line

as long as Mr. Crane field understands it, and we understand it.

The COURT: This motion is granted, with the understanding that because of its granting the defendant will not move to take away or subtract any rights under the rule that the Government has.

Mr. CRANEFIELD: I will take no advantage of the Government, your Honor.

The COURT: How does the defendant plead to the indictment?

Mr. CRANEFIELD: The indictment is against the International Union, United Automobile, Aircraft and Agricultural and Implement Workers of America (UAW-CIO), which, as your Honor knows, is a voluntary unincorporated association, the president of which is Mr. Walter Reuther. And with your Honor's permission, I will present Mr. Reuther to enter the plea. Mr. Reuther?

Mr. WALTER REUTHER: Your Honor, I would like the privilege, if I might, to make a very brief statement before entering a plea for the defendant union, if I might have that privilege.

The COURT: Yes.

Mr. REUTHER: UAW-CIO believes that the case that flows out of the indictment is one to which we attach great importance, because we believe it transcends the impact of what will come from the decision of the courts upon the status of the members of our union. We believe, as we have said many times, that human freedom is an indivisible value; and if the freedoms that our members enjoy, as citizens, and as members of our union, are being curtailed, then the freedoms of everyone are in jeopardy.

I think we are all mindful of the fact that we live in a very difficult period, when free men are being asked to rise to the challenge that the forces of tyranny present freedom with all around the world. And we in the UAW believe that America is the last best hope of free men. But we think we are going to win this struggle against the forces of tyranny, not because our production power is greater, or because our economic resources are greater than the opposition, but because America has been a great symbol of human dignity. It has recognized the value of the individual, and has stood before the world as a great spiritual, moral symbol. And this case that now comes before the court deals with those intangible, moral and spiritual values, the right of people to express themselves freely in the open market place of ideas. The issue specifically here deals with the right of working people, joined in voluntary association through a free labor union, to purchase and to use radio and television time to express their point of view on political matters and on matters of broad public policy.

The COURT: Mr. Reuther, I am sure that most of us are acquainted with that viewpoint, because we read it in the local

28 press, or in newscasts, on television, or radio. Now, I have permitted you to make a statement, but I hope you will make it short.

Mr. REUTHER: I will conclude.

The COURT: This is no place for talks of that nature.

Mr. REUTHER: I shall be happy to respect your judgment.

The COURT: You may be sure, as I have indicated a little while ago, that the defendant will get a just and honest review of the questions involved in this case by which every judge of this court it comes to.

Mr. REUTHER: We are confident that that will be the case. And I will conclude by saying, your Honor, that the defendant union, UAW-CIO, at this stage of the proceeding, pleads not guilty on all the counts in the indictment.

The COURT: A plea of Not Guilty may be entered for the defendant in this cause.

Mr. WOODS: I recommend no bond.

The COURT: No bond. All right. If you wish to make a statement?

Mr. WOODS: No, we have no speeches to make this morning, your Honor.

The COURT: I said "statement".

Mr. WOODS: Excuse me.

29 The COURT: I want to give you the same opportunity that the other side had, if you care to make it.

Mr. WOODS: We have no statement to make. Thank you.

The COURT: Very well. Is there any further business before the Court? (No response)

The Court will now recess.

Reporter's Certificate to foregoing transcript omitted in printing.

30 [File endorsement omitted]

United States District Court Eastern District of Michigan
Southern Division

[Title omitted]

NOTICE OF MOTION To EXTEND TIME, ETC.

To: Fred W. Kaess, United States Attorney.

Please take notice that at the United States Court House in the City of Detroit, Michigan, on the 26th day of September, 1955, at eleven o'clock in the forenoon of said day or as soon thereafter as counsel can be heard, the motion attached hereto

will be presented to the Honorable Frank A. Picard, District Judge.

HAROLD A. CRANEFIELD,
Attorney for Defendant.

Receipt of a copy of the above and foregoing motion acknowledged this 23d day of September, 1955.

GEORGE E. WOODS,
Assistant United States Attorney.

31 United States District Court Eastern District of Michigan
Southern Division

[Title omitted]

MOTION TO EXTEND TIME WITHIN WHICH DEFENDANT MAY MOVE
FOR BILL OF PARTICULARS OR RAISE DEFENSES AND OBJECTIONS
REQUIRED BY RULE 12 TO BE RAISED BEFORE PLEA—Filed Sep-
tember 26, 1955

Comes now International Union, United Automobile, Aircraft
and Agricultural Implement Workers of America (UAW-CIO),
the defendant in the above-entitled cause, by Harold A. Crane-
field, its attorney and moves the Court:—

1. that the time within which the said defendant may move for
a bill of particulars under Rule 7 of the Federal Rules of Criminal
Procedure be extended to October 31, 1955;

2. that the time within which the said defendant may raise
defenses and objections otherwise required by Rule 12 of the
Federal Rules of Criminal Procedure to be raised before entry
of plea be extended to October 31, 1955;

32 This motion is based on the affidavit of Harold T. Crane-
field attached hereto and made a part hereof.

Dated this 23d day of September, 1955.

HAROLD A. CRANEFIELD,
Attorney for Defendant.

33 United States District Court Eastern District of Michigan
Southern Division

[Title omitted]

AFFIDAVIT IN SUPPORT OF MOTION TO EXTEND TIME

UNITED STATES OF AMERICA,

Eastern District of Michigan, Wayne County, ss:

Harold A. Crane field, being first duly sworn, deposes and says:

1. that he is attorney for the defendant in the above-entitled prosecution and resides in the City of Detroit, Michigan;

2. that defendant is a voluntary unincorporated association; that deponent is General Counsel for the defendant and as such is charged with the general supervision of the representation of defendant in all legal matters and in all actions, civil or criminal, to which defendant is a party;

3. that he has been handicapped and delayed in the preparation of defense in this cause by the absence from the United States of Walter P. Reuther, president of defendant association, during much of the time that has elapsed since the indictment was filed and by the serious illness of Kurt L. Hanslowe, Esquire, one of his associates in the law office of defendant association, for the past seven weeks.

HAROLD A. CRANEFIELD.

Subscribed to and sworn to, before me this 23d day of September, 1955.

LOUISE SARAFIAN,

Notary Public, Wayne County, Michigan.

My commission expires June 8, 1956.

35 [File endorsement omitted]

United States District Court Eastern District of Michigan
Southern Division

[Title omitted]

Order Extending Time Within Which Defendant May Move for Bill of Particulars or Raise Defenses or Objections.—Sept. 26, 1955

The motion of defendant in the above-entitled cause for an extension of time within which to make certain motions under Rules 7 and 12 of the Federal Rules of Criminal Procedure came

on to be heard this 26th day of September, 1955, on the affidavit of Harold A. Cranefield, attorney for the said defendant and thereupon, upon consideration thereof, it was

ORDERED: that the time within which defendant may move for a bill of particulars under Rule 7 of the Federal Rules of Criminal Procedure be and the same hereby is extended to October 31, 1955; and it is

FURTHER ORDERED: that the time within which the defendant may raise defenses and objections otherwise required by Rule 12 of the Federal Rules of Criminal Procedure to be raised before entry of plea be and the same hereby is extended to October 31, 1955.

Dated: September 26, 1955.

FRANK A. PICARD,
District Judge.

36

[File endorsement omitted]

United States District Court Eastern District of Michigan
Southern Division

[Title omitted]

Motion to Dismiss the Indictment—Filed Oct. 31, 1955

The defendant moves, pursuant to Rule 12 of the Federal Rules of Criminal Procedure, that the indictment be dismissed upon the following grounds:

1. The provisions of Title 18, United States Code (Revised), Section 610, do not prohibit payments by labor organizations to defray the expense of preparation for and telecasting of political television broadcasts urging and endorsing the selection and election of candidates for United States Senator and Representatives in the Congress of the United States.

2. The provisions of Title 18, United States Code (Revised), Section 610, on their face and as construed and applied, abridge the freedom of speech and of the press, the right peaceably to assemble, and the right to petition the Government for a redress of grievances, of the defendant and its members, in violation of the First and Fifth Amendments to the Constitution of the United States.

3. The provisions of Title 18, United States Code (Revised), Section 610, on their face and as construed and applied,
37 unlawfully abridge the right of defendant and its members to choose their senators and representatives in the Congress, guaranteed by Article I, §2 and the Seventeenth Amendment to the Constitution of the United States.

4. The provisions of Title 18, United States Code (Revised), Section 610, on their face and as construed and applied, create an arbitrary and unlawful classification and discriminate against labor organizations and their members, including defendant and its members, in violation of the Fifth Amendment to the Constitution of the United States.

5. The provisions of Title 18, United States Code (Revised), Section 610, on their face and as construed and applied, are arbitrary and capricious and deprive the defendant and its members of liberty and property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

6. The provisions of Title 18, United States Code (Revised), Section 610, on their face and as construed and applied, are vague and indefinite and fail to provide a reasonably ascertainable standard of guilt, in violation of the Fifth and Sixth Amendments to the Constitution of the United States.

7. The provisions of Title 18, United States Code (Revised), Section 610, on their face and as construed and applied, invade the rights of defendant and its members protected by the Ninth and Tenth Amendments to the Constitution of the United States.

Respectfully submitted,

HAROLD A. CRANEFIELD,
JOSEPH L. RAUH, JR.,
Attorneys for Defendant.

October 31, 1955.

38-41

[File endorsement omitted]

United States District Court Eastern District of Michigan
Southern Division

[Title Omitted]

NOTICE OF MOTION

To: Honorable Fred W. Kaess,
United States Attorney,
Federal Building,
Detroit 26, Michigan

SIR:

Please take notice that the undersigned will bring the attached motion (heretofore filed in this cause on the 31st day of October, 1955) on for hearing before the Honorable Frank A. Picard, District Judge, at his courtroom in the Federal Building in the City of Detroit, Michigan on the 12th day of December, 1955, at 11:30

o'clock in the forenoon of said day or as soon thereafter as counsel can be heard.

HAROLD A. CRANEFIELD,
JOSEPH L. RAUH, JR.,
Attorneys for Defendant.

Affidavit of Service (Omitted in Printing).

42 AFFIDAVIT OF SERVICE (OMITTED IN PRINTING)

43 [File endorsement omitted]

United States District Court Eastern District of Michigan
Southern Division

[Title omitted]

TRANSCRIPT OF PROCEEDINGS ON MOTION TO DISMISS—December 12,
1955

Transcript of proceedings on motion to dismiss in the above entitled cause before Hon. Frank A. Picard, District Judge, at Detroit, Michigan, on Monday, December 12, 1955.

APPEARANCES:

Fred W. Kaess, United States Attorney,
George E. Woods, Chief Assistant United States Attorney, and
Leo Meltzer, Special Assistant to the Attorney General, Washington, D. C., appearing on behalf of the United States.

44 Harold A. Cranefield and Joseph L. Rauh, Jr., 8000 East
Jefferson Ave., Detroit 14, Michigan, appearing on behalf
of the Defendant.

Detroit, Michigan. Monday, December 12, 1955. 11:00 o'clock A.M.

PROCEEDINGS

The COURT: U. S. A. versus UAW-CIO.

Now, I got the brief from the Government about Monday or Tuesday of last week, didn't I?

Mr. Woods: No, sir. You got it Friday morning.

The COURT: I mean the defendant, from the defendant.

Mr. CRANEFIELD: Yes, your Honor, I believe so.

The COURT: And I got the brief from the Government
45 Friday before I left for home.

Mr. Woods: Yes, sir.

The COURT: In spite of that, I have read both briefs. Both briefs. But I am not in a position to—I haven't looked at any of the law at all, you see.

However, if you want to direct—or here is what I hoped I would be able to do: There are certain things in this brief—and remember, I read them over the first time—certain questions that already present themselves to me and I have a kind of a hunch that both sides will want to file a reply brief, don't you?

Mr. Woods: It might well be indicated, your Honor.

Mr. CRANEFIELD: I am in a difficult position to respond to that, your Honor, because unfortunately I did not see a copy of the Government's brief until last night. There was an error of transmission—

Mr. Woods: (Interposing) We are much embarrassed we didn't get Mr. Cranefield a copy. Mr. Rauh in Washington had a copy.

Mr. CRANEFIELD: I am not making any complaint.

The COURT: He probably had one before I did.

Mr. CRANEFIELD: I am making no complaint on the matter. It was an error. But I have not had an opportunity to examine thoroughly their brief, so whether we will wish to file a reply
46 brief, I cannot say.

The COURT: I am telling you now that you will. I am going to give you a chance to file a reply brief. And I am giving you a chance to file a reply brief.

Now, you can see that no court would be in a position to listen to an argument, and do it intelligently, this morning, would he?

Unless he had been thinking of—the way I hoped it would happen would be that I would get a chance to digest and study this and then when I was ready I would give you an hour or so to argue, or argue as much as you wanted to, and then I could ask you a few questions on things that were bothering me and then make my decision. But in reading the briefs I would know what this case is all about.

Right now, as I take the position of the defendant—and if I am not right, correct me—in the first place, even admitting that Congress had the right to include the word "expenditures", first petitioner-defendant's position is that those are not the "expenditures", items like this, as alleged in the indictment—those are not the type of expenditures that Congress had in mind and that this court, in trying to give a constitutional—in trying to interpret the law constitutionally, couldn't make any other decision except that they are
not that kind of expenditures.

47 Then your second point is that if they are included within the expenditures, then the Act is unconstitutional for a lot of reasons.

Mr. CRANEFIELD: That would be—

The COURT: (Interposing) Is that right?

Mr. CRANEFIELD: That is a very accurate summary of our basic position, your Honor.

The COURT: Well, flattery will get you no place.

Mr. Woods: I should have told him, your Honor.

The COURT: All right. Now, I am impressed, of course, by the one case, the Supreme Court case that you cited, I want to tell you now, however, that would be an authority for this court. I mean anything that the Supreme Court does is an authority.

Anything the Court of Appeals of the Sixth Circuit Court does is an authority. But anything some other Circuit Court does in some other part of the country is not an authority. Now, it is persuasive. It is persuasive, but I don't think you will find that that is an authority for me to go by.

Have you found anything to the effect that it is? Or did you just take it for granted, it being a higher court, that it was?

Mr. CRANFIELD: No, your Honor. I think we have always
48 understood that Court of Appeals, other than those of the Sixth Circuit, have only persuasive authority for this court.

The COURT: But it says in here—your pencil doesn't get hot before you tell me that that is an authority. And also that the opinion of the District Court is an authority. That is not an authority, either. If it were so, why, when I rendered an opinion on something all the other judges would do the same thing, and I would have to follow them here. Well, we don't. We read them, of course, and very often we follow them.

Mr. CRANFIELD: The one circumstance that we think enhances the persuasive effect of the decision in the Second Circuit Court of Appeals mentioned in our brief is the failure of the Government, in a criminal case, to appeal from the dismissal of the indictment.

The COURT: Well, there may be any number of reasons for that

Now, I am also impressed, on the other hand—I'm speaking to the gentlemen of the Government—I am also impressed by the fact that in your brief you seem to dismiss the authority of that Supreme Court decision with a wave of the hand, and I will tell you now, I haven't read the decision, but if the decision is what they tell me it is you can't dismiss that with any wave of the hand.

49 I warn you that in advance.

Now, let's see if there is any other way I can help you without—and mind you, I haven't even got an idea on this thing. I just read the two briefs. Off the record.

(Discussion off the record.)

The COURT: What do you want to do this morning? Have you gentlemen come here from Washington and other places?

Mr. CRANFIELD: May I seize this opportunity, your Honor, to present Mr. Joseph L. Rauh, who is associated with me in this defense of this cause. Mr. Rauh is of the Washington bar, a member of the bar of the Supreme Court of the United States.

The COURT: How do you spell that?

Mr. CRANFIELD: R-a-u-h.

The COURT: R-a-u-h?

Mr. RAUH: Yes, sir.

The COURT: It is Rauh?

Mr. RAUH: Yes, sir.

The COURT: Good. You are in the right place.

Mr. RAUH: Thank you, sir.

The COURT: All right. Anybody else?

Mr. CRANFIELD: No.

The COURT: All right.

Mr. WOODS: I would like to introduce to your Honor Mr.
50 Leo Meltzer, a member of the Massachusetts bar, and admitted to practice before the Supreme Court of the United States, Special Assistant to the Attorney General, from the Department of Justice.

The COURT: I see. From what part of Massachusetts?

Mr. MELTZER: Boston.

The COURT: Oh, do you know the Cabots and the Lodges, and do you speak to them?

Mr. MELTZER: Yes, I have heard of them. I have spoken to some of them.

The COURT: Good. All right. Welcome to both of you.

Now, what do you want to do this morning? Do you want to talk about this? You admit—you admit that you did all of the things, for the purpose of this—

Mr. CRANFIELD: (Interposing) For the purpose of the motion.

The COURT: (Continuing)—for the purpose of the motion, you admit that you did the things that they allege. But my policy or my practice is to read the brief completely through and not make a notation, not make a note, not do anything. If I am tempted to mark something, as you do when you get towards the end, you know, I didn't do it.

51 I would like to hear, if you want to say something this morning—oh, something else I have got to take up with you.

I think both sides are agreed that prior to the putting in of the word "expenditures" it had been the custom of certain organizations—maybe corporations were included in this, I don't know—but see if I am right here—it had been the custom to make what might be interpreted as contributions to a party or a candidate, but do it in the form of certain expenditures, payments, and that Congress looked upon that as a loophole that had not been filled by the Act as it was before "expenditures". Am I right on that?

Mr. CRANFIELD: That is—

The COURT: (Interposing.) I know the Government takes that position.

Mr. WOODS: Yes.

Mr. CRANEFIELD: That is our view of the legislative history of the amendment.

The COURT: Now, here is where we divide. That is, the counsel, in this.

Petitioner takes the position—and this is for the benefit of all—you take the position that when Senator Taft, who is the co-author of the Taft-Hartley bill, who put the word "expenditures" in there—if I make a mis-statement, correct me, because, remember you have lived with this, I haven't—that Senator Taft, 52 when he was being quizzed on it—and if you will notice the plaintiff's brief they go into detail about the number of questions that were asked Senator Taft—do you not, gentlemen?

Mr. WOODS: Yes, sir.

The COURT: (Continuing.) —at that hearing, he said—and you quote this—"We want to put the labor unions in the same position that the corporations have been," or something to that effect.

Do you remember that line in there?

Mr. CRANEFIELD: Yes.

The COURT: What is that?

Mr. WOODS: Yes.

The COURT: The government does not quote that. There may be a reason for it, you see. Suspicious as I am of all writers of briefs, I said, "Oh, oh, why is that omitted?"

Now, your position is that they just merely wanted to make sure that contributions which you do not question,—and neither side claims that this is a contribution within the meaning of the statute, do you?

Mr. WOODS: No.

The COURT: No. It is an expenditure. Very interesting question. And I think it has been very well presented up to now. Don't go slipping, either side, here.

But petitioner's position is that is merely what they 53 wanted to do. The government's position is that having seen the danger, or having seen the loophole, Congress wanted to plug it. Am I right?

Mr. WOODS: That's right.

The COURT: Yes. I direct your attention to the fact that the government has not quoted that in its brief. And in petitioner's brief, when you quote that, there are some dots or stars in there indicating that you have left something out. And I said to myself, "Oh, oh, what did they leave out?"

You know, gentlemen, at one time I was on the Michigan Liquor Control Commission and I got suspicious of everybody.

Now, there is one more thing. Oh, yes.

Here is Section 610, and it reads this way to start out with:

"It is unlawful for any national bank or any corporation organized by authority of any law of Congress—"

Would you say that, for example—oh, let me pick—well, I look across the street and I look at the Free Press Building, and I take it for granted the Free Press is a corporation. I don't know. Is it?

Is the Free Press a corporation?

A VOICE: No.

The COURT: It must be. It isn't owned by Knight all alone, is it? Do you know?

A VOICE: It is a corporation, I am sure.

The COURT: Yes. Now, you wouldn't say that the Detroit Free Press is organized by authority of any law of Congress, would you?

Mr. CRANFIELD: No.

The COURT: Either side?

Mr. CRANFIELD: No.

The COURT: Either side?

Mr. WOODS: No, sir.

Mr. MELTZER: No, your Honor.

The COURT: What is that?

Mr. MELTZER: No, your Honor.

The COURT: All right. Now, in that first part of that section nothing is said about "any" corporation. It is only "any corporation organized by authority of any law of Congress."

Now, when you get down to the second paragraph, it begins like this:

"Every corporation or labor organization—" Is that where the Government, and both of you, take the position—and mind you, I just happened to look out of the window and see the Free Press building over there and I thought of the Free Press—that any corporation—well, the Fress Press, Chrysler, Ford, General Motors, or anybody that is—these insurance companies—
55 do you think that that takes in every corporation?

Mr. MELTZER: If it please the court, may I point out that in the seventh line of the first paragraph it says "or for any corporation whatever".

The COURT: Wait a minute. You are right. I missed that. Well, that clears up something.

Mr. MELTZER: And that, of course, comes within the—

The COURT: (Interposing.) Wait a minute. Yes. Yes, it does. I looked through that thing a dozen times and I missed that. You see how these things help. All right.

Now, there was another question came up. Oh, yes. There was a case—and I can't remember it. You gentlemen may be able to remember it. It was either New York or Pennsylvania—I am pretty sure it was Pennsylvania or Massachusetts, in there somewhere, where to a great extent the Supreme Court for some reason or other exempted labor unions from certain provisions of the antitrust act. Do you remember that group of cases?

Mr. CRANFIELD: Possibly United States against Hutchinson and the Carpenters' Union.

The COURT: No. I got it. I didn't have a chance to look it up this morning. I know I got it. Do you remember that, gentlemen?

56 Mr. MELTZER: I do not happen to recall it, but I know that there is such a case.

The COURT: Yes.

Mr. MELTZER: I think, may it please the court—

The COURT: (Interposing.) I think it was a hat case. It may have been—

Mr. MELTZER: (Interposing.) United Hatters, Danbury?

The COURT: Wait a minute. Now it comes back to me that it was Danbury, I guess, against some union.

Mr. MELTZER: Yes. United Hatters.

The COURT: Well, the point I am getting at is this: And this thought may not be worth a continental. I don't know. I am thinking out loud with you, because if I see something that I think helps one side, I am here to do justice. I am not here to see who can out-smart the other fellow and get in the law, and if somebody misses something I ask them, because if I don't ask them somebody else is going to ask them when it gets up to a higher court, aren't they?

Now, there is also a rule of law, as I remember—and this is vague—I remember somebody brought an action against individuals of the union and the union itself right here in this court, and I dismissed it, because while they could sue the union, but not individuals, and on the theory of diversity of citizenship all the members of the union that were there had to be diverse

57 citizens and inasmuch as they had members of the union in that other state, why, there was no diversity as to them and I had to dismiss the case.

Which shows that to some extent the courts have treated unions not as they have treated corporations, but as individuals. Now, that would be on your side, wouldn't it?

I was kind of surprised that nobody mentioned that, and maybe after you look at it, or after I look at it, I won't be surprised at all, but, anyway, it is a thought that came into my mind as I was reading it.

See if I can think of anything else I thought of that might call for some action on your part.

Oh, it is petitioner's position, is it not, that if this activity of the union in this particular instance—if that is to be construed as expenditures and constitutional—well, no "as expenditures"—forget the constitutional part—that it is so worded that it would prevent the union from doing almost anything of a political nature, even the publishing of their own party organ that went directly to the members. Not the one that was given away. That is your position.

And that if it applied to them it would also apply to corporations, and in spite of the freedom of the press would stop these editorials from being written by newspapers. Isn't that your position, if that is to be construed in that way?

58 I don't mean that you contend that that can be done or that it does do that. But, do you know, I have seen some editorials in some of these papers on politics. Strange as it may seem. And with some of which I didn't agree all the time.

Mr. RAUH: Your Honor, it is our position that if such an exception were made in the case of a corporation producing a newspaper, that would be an unlawful discrimination against us.

The COURT: Well, yes.

Mr. RAUH: It is perfectly—

The COURT: (Interposing) And that there is no reason for it.

Mr. RAUH: It is perfectly clear, however, that Senator Taft, in the legislative history, did not intend to include the ordinary actions of a newspaper.

The COURT: That was organized for the purpose of publishing news, because he said "They have always written editorials right from the beginning of time."

And, now, the mere fact—I would like to be put straight on that—the mere fact that a Senator has expressed an opinion in the legislative debate as to what an act would cover is not binding upon me, is it, or any court?

59 Mr. RAUH: You have already said that flattery will get us nowhere, but I would like to point out that that is exactly the full measure of our case.

Senator Taft has taken certain positions. The Supreme Court rejected those positions in the CIO case. The Second Circuit, for what that is worth as an authority, has rejected Senator Taft's position in the Painters' Local case. It is our position, in essence, that that must be rejected here and the statute narrowed. Senator Taft is not binding upon you in any way.

The COURT: Well, I—

Mr. MELTZER: (Interposing) If it please the court, as to a newspaper which is established for the purpose of disseminating news and making editorial comment, we, of course, agree.

The COURT: Who agrees?

Mr. MELTZER: The Government agrees that the statute does not cover.

The COURT: No. It is your position. Now, there is no agreement here. I haven't taken any position—

Mr. MELTZER: (Interposing) No. I understand.

The COURT: (Continuing)—one way or the other. I have merely stated that their position is that.

Mr. MELTZER: Yes.

The COURT: That if it is legal for a newspaper to make those kind of comments, editorially, in a political way, and to stop
60 them from going on the air or television and doing the same thing, that that is unconstitutional not because it is discrimination, but because it is an unfair discrimination.

The government's position is this: Congress takes these discriminations as it comes to them.

Mr. MELTZER: Yes, sir.

The COURT: One by one.

Mr. MELTZER: And deals with the evils as they arise.

The COURT: Well—

Mr. MELTZER: (Interposing) That is what the legislative history shows they have done.

The COURT: Suppose there are two evils. Now, suppose there are two evils. We have got a group of men over here. One of these evils is very much liked by this group but they are in the minority. The other group dislikes them, but both of them are evils. The majority group that dislikes the evil corrects it. The group over here that likes the evil doesn't want to correct it because they say, "You have got an evil over there—a big evil that you like, and you won't correct ours, and your evil is just as big as our evil."

I ask this: Is Congress supreme in telling me—and I am asking; I am giving your position—"We can pick out any evil we
61 want. The other may be worse than the one we correct, but our word on that is final."

Now, is that your position?

Mr. MELTZER: Yes. Our position is that Congress, at the turn of the century, found that only aggregations of wealth in the form of corporations were exerting an undue influence.

The COURT: I mean that is your position. Yes. All right.

Mr. MELTZER: And not until the strength of organized labor reached the point where it became a problem in the business of using aggregations of wealth in influencing—

The COURT: (Interposing) Well, at that time, which was 1947—

Mr. MELTZER: (Interposing) Yes.

The COURT: (Continuing)—let us say—and I am not jumping on the press. I am just taking that because they are in the dissemination of news—the press in this country admittedly was overwhelmingly against one of the political parties here, and very much in favor of the other. It was concentrated wealth, and there was concentrated power. Wasn't one as much of an evil as the other?

Mr. MELTZER: From some aspects, yes.

The COURT: Yes. Now, your position is that they have
62 got to wait a while. Well, when ninety per cent of the newspapers, or ninety-five per cent of the newspapers get to be one way, are we going to wait for the other five per cent?

Mr. MELTZER: But, if it please the court, the judgment is in the legislature.

The COURT: That is your position. That is what I wanted you to say.

Mr. MELTZER: Yes, it is on that.

The COURT: Mind, you, gentlemen, throughout these arguments, I will be making statements that will tell you—undoubtedly tell you, "Well, he has already decided it," or "He is all one side." I am not.

These gentlemen, Mr. Kaess and Mr. Woods, will tell the rest of you that I will ask questions all the way through, and one minute if my position is of any moment to you you will say, "We got him," and the next minute you say, "We lost the judge." You see?

So don't go by anything that I ask. I am just getting information.

Mr. RAUH: May I state our position on the picking out of evils, sir?

The COURT: I think I know yours, but go ahead. Go ahead. I can always learn something.

63 I remember once as a newspaper reporter, when I was working on the newspaper, somebody called up the City Desk when I was right there, and I started to take the item, and they started to give me an item, and I said, "I got all that. Thank you very much but I have got the whole thing."

And when I hung up the telephone the City Editor gave me the devil. "You know what?" he said, "listen to what the man has got to say. He might give you something on that that you haven't got."

Off the record.

(Discussion off the record.)

The COURT: All right.

Mr. RAUH: If your Honor please.

The COURT: Yes.

Mr. RAUH: The Government, we will concede, is right in stating that you can pick out an evil at times, but you cannot, sir, where the purpose is one of discrimination as we believe we have shown.

And, secondly, you have to have an evil; and here, where the disproportion is against labor, where the disproportion against labor expenditures is already great, to further make the disproportion greater is not remedying an evil at all, but it is in fact a means of making the evil worse.

64 The COURT: Well, your position is that that is. But wouldn't I have to take testimony on that?

Mr. RAUH: No, sir. There is plenty of material available to go into this, and the most important fact is that the Congress should have taken testimony, and if this is debated in full, they did not do it for the purpose of remedying an evil.

The COURT: But shouldn't I have—if this case were to turn on that point, certainly I would have to take testimony. I quite agree that perhaps you would be able to prove your point, but we can be all agreed on something and yet testimony be necessary to prove it—that there wasn't any evil for them to cure in the first place, because the disproportion was all on the other side, and that really the activity of the union did not overbalance it in favor of the other side, but merely almost caught up, according to you, with the evil as it has existed and just lessened the evil on the other side.

Mr. RAUH: It didn't even nearly catch up, according to us, sir. The evil—the disproportion was there against us before, as it is against us today, only more. And even if the statute were held completely unconstitutional the disproportion is still there against us. But I don't believe your Honor would need to take testimony since the question is "Was Congress passing an arbitrary

65 and discriminatory law."

The COURT: Well, that may be something. I want to ask you something else. Do you take the position—suppose we declare this unconstitutional on the word "expenditures". Is there a saving clause in there at all that would permit the word "contribution" to go on?

Mr. RAUH: Oh, yes, I am sure that the statute is separable.

The COURT: Is there?

Mr. MELTZER: There is no saving clause in the statute.

Mr. RAUH: Well, I don't think the Government contends that the statute is not separable, when it was there before.

Mr. MELTZER: I make no——

Mr. RAUH: (Interposing) And it is still——

The COURT: (Interposing) I don't know. There is another question for you, gentlemen.

Mr. RAUH: Well, I am quite sure it is separable, your Honor. I would be happy to brief that point.

The COURT: Well, now, might this not result in—suppose the court said “It is unconstitutional”, and if that takes it out entirely what may happen to the ban on corporations?

66 Mr. RAUH: That is not before the court. Actually the line we are asking your Honor to draw does not even completely exempt labor unions. I would like to make that clear.

The COURT: What is that? I didn't quite get it.

Mr. RAUH: The line on the word “expenditures” that we are asking your Honor to draw is not a line that would give labor unions complete freedom.

The COURT: Oh, no.

Mr. RAUH: We have never made such a contention.

The COURT: I know that. No. I mean this: Suppose the whole thing—there was nothing left; that it is not separable or severable, you see, and the whole thing goes out. That would permit corporations to go out here and make contributions, wouldn't it?

Mr. RAUH: If it were not separable.

The COURT: Yes.

Mr. RAUH: I am quite confident it is separable, sir.

The COURT: Now, of course, there is one thing about corporations, why they wouldn't necessarily make either contributions or expenditures, because the people they sell their goods to are on both sides of the fence. They aren't going out socking themselves in the face. That is one thing.

I want to tell you another thing that you might want to
67 go into a little bit more, and that is the position—or the charge is made that in unions you have got your members. Some members may be in favor of one party or one candidate and—well, the other fellow might be even a brother or a relative of the other candidate, and might not be in favor of the action of the union. You know, that is—that charge is made in there.

Well, suppose I own corporate stock, as I do. Am I not in the same position if the Board of Directors goes out here and makes expenditures as the stockholder is? Is not petitioner's position that it is a case of majority rule?

I asked the Government on that, isn't it more difficult—isn't it more difficult for the man who is a stockholder to get out, if he is a stockholder in the corporation, to get out of the holding of his stock, or being a minority, being obliged to follow the majority, than it is a union man to get out of the union? Unless in some cases where there are closed shops and all that?

Mr. MELTZER: Well, all I can undertake to say in that connection, your honor, it is precisely because stockholders in corporations were placed in that position, among other things—

The COURT: (Interposing) That was one of the reasons.

Mr. MELTZER: (Continuing)—that corporations were first
68 legislated against.

The COURT: As a matter of fact, Theodore Roosevelt said that, I think, one time in one of his opening messages to Congress—"It is unfair to spend their money." And your position is that the union man, whose dues are going for this, is in the same position.

Mr. MELTZER: An analagous position.

Mr. WOODS: That's right.

The COURT: Of course, I was thinking about something last night. I have forgotten now what it was. It has escaped me.

Of course, I can sell my stock and in that way I am in a better position than the union man because he can't get along without the union very well. The lever is on your side to some extent. Although one I am in to make money and the other I am in to save my job and the—well, not the fringe benefits, but the things that go along with it.

Mr. MELTZER: If it please the court, I suggest on that point that in both situations the stockholder and the worker are in for their economic interest. Nothing improper about it. They are both prompted by economic motives.

The COURT: Yes, I think that is right. I think that both sides are in there.

Mr. RAUH: So many things, your Honor please, come down to degrees, but the suggestion that a union and a corporation
69 are similar in that regard, I can't accept that. A corporation is set up for profit. The union, as our union, has from the very first been engaged in political action. It is set up for political action among other functions.

When a corporation comes over here and goes to the Secretary of State to set up, they have one thing in mind. Profit. When we set up our union it was intended to be economic, but equally social, legislative and political, and that therefore this comparison between this state raised entity of the sheer matter of dollars and cents for as much as you can get, against the social and political and legislative as well as economic aspect of the union—in our constitution from the very beginning there has been this—I am sure your Honor saw in the brief, we quote our constitution. Our functions are much broader than corporations". The comparison is almost a superficial syllogism that has been made.

The COURT: I got you. All right. I want to ask you something else. The UAW is not a corporation, is it?

Mr. RAUH: No, sir.

The COURT: I want to ask you if the National Manufacturers' Association, whatever it is—National Association of Manufacturers—that is not a corporation either?

Mr. RAUH: No, sir. If it were, the discrimination would
70 not occur. It is because it is not a corporation.

The COURT: Then there is another one in there—

Mr. RAUH: (Interposing) And there is the Chamber of Commerce, the American Medical Association—none of those are corporations. They, therefore, avoid the ban that is placed on labor unions, which is another ground of discrimination.

The COURT: I know that is what you—you have got that in your argument on discrimination.

Is this discussion helpful at all? Do you gentlemen—not giving any idea of the way I feel about it, because I couldn't. I couldn't tell you the way I feel about it at all.

I read some paragraph from the Government's brief and I say, "I am all for it," and then I read something else where the union says something, and I say, "I am all for it."

I don't know. I think I switched probably a half a dozen times in reading the briefs. But I think that is one thing that all judges should do. You have got to—not switch with the winds, but you have got to listen to these arguments.

Now, is there any thing else you want to tell me? And if
71 not, here is what I will do: Well, the holidays are coming. I would give you until the 15th of January to file a reply brief. Is that all right with you, or is that—

Mr. MELTZER: (Interposing) May we have a moment?

The COURT: Yes. Surely.

(Short intermission.)

The COURT: The 16th of January, gentlemen.

(Short intermission.)

Mr. CRANFIELD: I think we are in agreement that January 16th would be convenient and an accessible date for the filing of reply briefs.

The COURT: All right. Then right after that, that is, when I get these, we will then—I will go over them and there may be some questions. All right, I might do this, even as I have done, write the questions to both sides and get their answers. I don't think that will be necessary, but something may come up.

I think you will find, gentlemen, that I will ask questions, and I will expose my ignorance, and I am not afraid to do it. It is pretty well known anyway, so why should I be afraid to do it now? After that, I think I will call you in, and I will give you probably two hours a side—that ought to be enough, oughtn't it? You
72 don't talk too long, you know.

Mr. WOODS: We might—may I make a statement?

The COURT: Yes.

Mr. WOODS: We might point out, your Honor, that up to this point this morning, we had thought that the briefs pretty well stated our position, and that apparently the defendant's brief—

The COURT: (Interposing) If you are satisfied with your brief, Mr. Woods, it is all right with me.

Mr. WOODS: I just want to point out to the court that we will use that time as indicated, as the court has suggested, to perhaps make a reply brief, but we may not make one.

The COURT: All right with me. It is all right with me. I am not going to try to tell you how I think you ought to run your case, or how you ought to conduct it. You may be entirely satisfied, and if you are I am not going to worry about it, unless you get an extension, which I don't want to give, I will take it for granted when the 16th comes and you haven't got a brief in here that you are not going to file one.

Mr. WOODS: There isn't going to be one; that's right.

The COURT: But—

Mr. CRANFIELD: May I—

73 The COURT: (Interposing) Excuse me.

Mr. CRANFIELD: Excuse me.

The COURT: You can take whatever position you want to, but I can see a lot of reason why, if I were you, I would want to file one.

Mr. CRANFIELD: May I indicate, you- Honor, that we will file, I think, a reply brief, and something more than that. We may address ourselves, with your permission, to some of the points you have raised this morning.

The COURT: That is what I gave them to you for.

Mr. CRANFIELD: As well as things in their brief.

The COURT: That is what I gave them to you for, gentlemen. And I was impartial. I tried to be impartial; where I thought that something was in your favor I said it, and when I thought something was in favor of the Government I said it, and that is very unusual, as probably you gentlemen from Washington would say, "Why, I never heard a Judge do that before," but perhaps I am wrong. I don't know. I may not do it, except this: There is a good point in there and you miss it, or you miss it, and it gets up to the Court of Appeals and even if the Court of Appeals misses it and it gets up to the Supreme Court of the United States the chances are that in that group they are not going to miss it.

74 The chances are they are going to say, "Well, how about this point? This is so important," they say, "we think we ought to have some information on this; we ought to find out about it."

You have seen cases go up. I saw a case go up here to the Court of Appeals on one question and when it came down from

the Supreme Court of the United States it was an entirely different question involved.

Off the record.

(Discussion off the record.)

The COURT: You see, that often happens or may happen. That is why I think that if I have got something here that I think might be of benefit, tell them now, let's get this thought out in the open. Tell the government.

Have you got anything? Anybody want to say anything? I don't want you gentlemen to go back to Washington and say, "We never got a chance to say anything; that Judge talked the whole time."

Well, you might be glad to get out of Washington. If I were you, I would be. But then, you still might want to say something.

Have you got anything, Mr. Rauh, that you want to say at all?

Mr. RAUH: I just want to say that I appreciate the hints, or whatever the questions, are, and that we will get to work on the reply and I hope it will satisfy the Judge.

75 The COURT: I thought I was the one that kissed the Blarney Stone and not you.

How about you, Mr. Meltzer?

Mr. WOODS: I forgot to tell him, too, your Honor.

The COURT: All right. They have heard me say that before, so they are pretty well versed in it.

Is there anything else, gentlemen?

Mr. WOODS: No, sir.

Mr. MELTZER: No, sir.

Mr. WOODS: That is all, thank you.

The COURT: Any other matter? All right.

76 Reporter's Certificate to foregoing transcript omitted in printing.

[File endorsement omitted]

United States District Court Eastern District of Michigan
Southern Division

No. 35004

UNITED STATES OF AMERICA, PLAINTIFF,

VS.

INTERNATIONAL UNION UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO),
DEFENDANT

OPINION OF THE COURT—February 3, 1956

Motion to dismiss the indictment in the above matter, each of its four counts alleging a separate violation of Section 610, Title 18 of the Code, (Federal Corrupt Practices Act) prohibiting political expenditures by labor unions. The pertinent section is set out in the appendix together with the Act's definitions of "expenditure" and "contribution". (Sec. 591)

Here the specific charge is that the "expenditure" violation came in connection with the selection of candidates for a senator and representative to the United States Congress during the 1954 primary and general elections. It is alleged that defendant paid a specific amount from its general treasury fund to Luckoff and Wayburn Productions, Detroit, Michigan, to defray the costs of certain television broadcasts sponsored by the Union from commercial television station WJBK.

It is charged that the broadcasts urged and endorsed selection of certain persons to be candidates for representatives and senator to the Congress of the United States and included expressions of political advocacy intended by defendant to influence the electorate and to affect the results of the election.

It is further charged that the fund used came from the Union's dues, was not obtained by voluntary political contributions or subscriptions from members of the Union, and was not paid for by advertising or sales.

FINDINGS OF FACT

For the purposes of this motion the charges alleged are taken as true. *United States v. Jones*, 207 F. 2d 785; *Knoell v. United States*, 239 Fed. 16; *United States v. Van Auken*, 96 U.S. 366.

The contention of defendant is, first, that the expenditures, admittedly so made, are not the type of expenditures intended to be covered and prohibited by Section 610 of the Act. Six other

reasons for dismissing the indictment follow, and all are to the effect that should this court find that the expenditures made by defendant are covered by Section 610, then the provisions of that section are unconstitutional because—

(a) They abridge both freedom of speech and of the press, peaceable assemblage and right of petition, in violation of the First Amendment;

(b) They unlawfully abridge the right to choose senators and representatives in Congress as guaranteed by the Seventeenth Amendment;

(c) They create an arbitrary and unlawful classification and discriminate against labor unions, in violation of the Fifth Amendment;

(d) They are arbitrary and capricious, and deprive defendant and its members of liberty and property without due process of law—in violation of the Fifth Amendment;

(e) The statute is vague and indefinite, in violation of the Fifth and Sixth Amendments; and finally

(f) The provisions invade the rights of defendant and its members, under the Ninth and Tenth Amendments.

It will be particularly noted that six of the seven reasons advanced for dismissing the indictment are based upon the alleged unconstitutionality of the law. Therefore it becomes our

79 duty under the decisions to determine whether or not defendant's first objection is valid for if we are able to determine that the conduct complained against is not proscribed by the Act, without passing upon the law's constitutionality, we must do so. *United States v. C.I.O.* 335 U.S. 106; *United States v. Petrillo*, 332 U.S. 1, p. 10; *United States v. Rumely*, 345 U.S. 41-45; *Crowell v. Benson*, 285 U.S. 22.

CONCLUSIONS OF LAW

In answer to that first objection we recall very briefly certain salient features in the history of the Federal Corrupt Practices Act. The first legislation of this type was enacted in 1907 and did not include labor unions in its prohibition; neither did it include the word "expenditure" and as pointed out in *Newberry v. United States*, 256 U.S. 232, it did not apply to "primaries". Admittedly it was not until 1947 that the word "expenditure" was written into the Act which then covered "primaries" and "contributions" of all kinds with a definition of the distinction noted between "expenditure" and "contribution". Since that final enactment (1947), which re-adopted the War Labor Disputes Act including unions and adding primaries, three tests and interpreta-

tions of what the law meant have been made, one by the Supreme Court of the United States, one by the Court of Appeals for the Second Circuit, and one by a District Court.

We examine those decisions.

UNITED STATES V. C. I. O. AND PHILIP MURRAY, 335 U.S. 106

The first interpretation of this statute (June 1948) was United States v. C.I.O. and Philip Murray, its president (335 U.S. 106). In that instance the C.I.O. had published a front page statement by Mr. Murray urging election of a certain congressional candidate in Maryland. This publication occurred in its regular C.I.O. News, a weekly, owned and published by the C.I.O. with money coming from the general funds of the Union (as in the case at bar)

80 but with this additional feature; this particular issue of the News went not alone to the C.I.O. membership but extra copies were run off and distributed to the public.

On defendant's motion the District Court dismissed the indictment on the ground that the statute was unconstitutional as an unwarranted abridgement of the First Amendment. On appeal to the Supreme Court of the United States held that it had long been a policy that if the statute could be interpreted in a manner avoiding the constitutional question it should be, and the court, speaking through Mr. Justice Reed with these words, held that the prohibition in the Act against "expenditure" did not include an "expenditure" such as the one involved;

"We are unwilling to say that Congress by its prohibition against corporations or labor organizations making an 'expenditure in connection with any election' of candidates for federal office intended to outlaw such a publication."

Justice Frankfurter wrote a concurring opinion.

Four other Justices, however, to-wit Mr. Justice Black, Mr. Justice Douglas and Mr. Justice Murphy, speaking through Mr. Justice Rutledge, agreed the indictment should be dismissed but on the ground that the entire section 313 (610) was unconstitutional. Meeting the question full on they said:

"If section 313 as amended (610) * * * can be taken to cover the costs of any political publication by a labor union, I think it comprehends the 'expenditures' made in this case. By reading them out of the section, in order not to pass upon its validity, the Court in effect abdicates its function in the guise of applying the policy against deciding questions of constitutionality unnecessarily. I adhere to that policy. But I do not think it justifies invasion of the legislative function by re-writing or emasculating the statute. This in my judgment is what has been done in this instance."

Mr. Justice Rutledge also notes that there is nothing in the Act as adopted that makes the "source" of the funds important. If the Union sponsored the "ad", it was immaterial whether the funds used came either through dues, from newspaper subscriptions, or a special fund raised for that purpose, although Senator Taft, who assumed the burden of defending this particular section in the Senate, differentiated between funds used from dues, and those subscribed for or raised for a certain special purpose. In that case also (C.I.O. News, supra) it was emphasized that the word "expenditure" was merely added to the Act to cover situations not previously included within the accepted legislative interpretation of "contribution". Justice Reed said—

"Apparently 'expenditure' was added to eradicate the doubt that had been raised as to the reach of 'contribution,' *not to extend greatly the coverage of the section.*" (Emphasis ours)

Therefore we find that when the first decision interpretive of this Act was announced by the Supreme Court of the United States one District Judge and four Justices of the Supreme Court had held the section unconstitutional and five justices of the Supreme Court refused to pass upon its constitutionality as unnecessary, but nevertheless dismissed the indictment because it did not state a cause of action, to-wit, "expenditure" didn't include the type of "expenditure" made by the Union, although authorized by its president.

It will also be noted that Mr. Justice Reed's majority opinion states that unless the legislation is so construed

"the gravest doubt would arise in our minds as to its constitutionality." (Emphasis ours)

UNITED STATES V. PAINTERS LOCAL UNION No. 481 (172 F. 2d 854)

The second case of interpretation was United States v. Painters Local Union No. 481, 172 F. 2d 854, decided by the Second Circuit Court of Appeals in 1949. The charge was against the Union and its President for placing and paying for a political ad in a *daily newspaper of general circulation and a political broadcast over a commercial radio station*, both out of funds from the general treasury of the Union.

[File endorsement omitted]

[Title Omitted]

United States District Court, Eastern District of Michigan
 Eastern District of Michigan
 Southern Division

[File endorsement omitted]

[Title omitted]

82 In our opinion this case is on all fours with the case at bar except that it was a "television" broadcast instead of "radio"—which difference we do not deem important.

In Painters Local Union, *supra*, motion for dismissal by defendant was denied by the District Court which held the act constitutional. The question of whether these were "expenditures" within the meaning of the act was not raised by defendant nor discussed by the District Court and the case came to the Second Circuit supposedly solely on constitutional issues. Nevertheless that Court of Appeals reversed the District Court and, using the rationale of the Supreme Court in the C.I.O. opinion, *supra*, ruled on the scope of the statute and not on its constitutionality. It held that such political advertisements in a media of information commercially owned and of general circulation were not prohibited "expenditures". As Judge Hand stated—

"It seems impossible, on principle, to differentiate the scope of that decision (referring to U.S. v. C.I.O., *supra*) from the case we have before us."

We feel compelled to adopt that same language and repeat that the facts in United States v. Painters Local Union No. 481, *supra*, and the matter before us are as alike as two peas in a pod.

Nor must we neglect to add that the Court of Appeals (Second Circuit) declared that it too had grave doubts concerning the constitutionality of the Act if the word "expenditure" were broadly construed.

It is interesting to note that here the government had a case made to order for appeal but no petition for certiorari was filed to the Supreme Court. See Mr. Justice Frankfurter's opinion—*Andres v United States*, 333 U.S. 740, at page 756, concerning a similar situation.

The government insists that a decision of the Second Circuit is not an authority we must follow. With this statement we agree. But District Courts have generally followed decisions of other Courts of Appeals which would decide the

matter and where their own circuit had not yet spoken. *King v. United States*, 10 F. Supp. 206; *Flannery v. United States*, 25 F. Supp. 677; *The Bleakley No. 76*, 56 F. 2d 1037. It is on the theory that such procedure is in the interest of promoting a single system for the administration of justice by having a uniform construction, and as stated in *Martyn v. United States*, 176 F. 2d 609—

"We would not be justified in adopting a different construction of the Act than that which prevails in the Fourth and Ninth Circuits unless we were able to demonstrate that that construction was clearly wrong."

UNITED STATES V. CONSTRUCTION & GENERAL
LABORERS LOCAL UNION No. 264

101 F. Supp. 869

The third and final decision interpreting Section 610 is *United States v. Construction & General Laborers Local Union No. 264* and two officers, 101 F. Supp. 869, decided in 1951. It goes further than the case at bar. That indictment involved twelve counts and charged various kinds of "contributions or expenditures" by defendants contrary to the provisions of the Federal Corrupt Practices Act. In the case at bar there is no charge of "contribution" violation. The entire charge is devoted to "expenditure".

In *General Laborers*, supra, the government proved that the President, business agent of the Union, had been a candidate for Congress, that the Union had paid certain expenses connected with his campaign, and that three of the Union employees, two of whom were on the Union's regular payroll, had been very active in his support. On Union time and increased pay, they had put up posters, passed out cards and pamphlets, driven voters to register and to the polls election day, and had managed the "Freedom Train", a replica of the original Freedom Train, the vans of which contained copies of historical American documents as well as
84 their candidate's campaign literature. One man on Union pay had worked around the candidate's home cutting the grass and in one instance \$200.00 was paid by the Union to some worker in connection with the candidate's campaign. There is no totalling up or reckoning of just how much money was expended directly or indirectly by the Union in this campaign but the court, rendering its opinion, stated—

"* * * It is hard to conceive that the Congress had in mind when it enacted this particular law, that an uncertain, insignificant amount such as is involved here should be considered as an expenditure and used as a basis for a criminal prosecution."

Here again the Court takes issue with the broad construction of the word "expenditure" urged by the government, adding

"Reiterating, it is difficult for me to believe that the Congress, with its vast knowledge of the practical application of its acts, intended such a restriction as is sought to be placed upon labor unions as here."

However, the distinction made by the District Court in the General Laborers case, *supra*, that it is not the "type" of activity that Congress had in mind but the "degree" of activity that should govern, does not impress us. We do not find anything in this Act that is authority for such a statement. The rule of *de minimis non curat lex* does not apply to criminal cases. *United States v. Construction and General Laborers (supra)*.

EFFECT OF THESE THREE DECISIONS?

Having considered defendant's three authorities we find no case cited by the government otherwise interpreting this section of the Act, and its attempts to distinguish those cases from the case at bar are either futile or picayune. The government has, however, presented a very scholarly brief and advanced many arguments for denying the motion, tracing the history and objectives of this legislation from the first enactment of the Federal Corrupt Practices Act in 1907 when "money contributions" by corporations were prohibited, right down to the present amended version passed in 1947 where the word "expenditure" was added as a supplement to "contribution".

85 None of these three above cited cases, and surely not this court, challenges the right of Congress to pass any and all legislation deemed necessary to keep elections free from taint of fraud or coercion unless, of course, in those activities Congress violates provisions of the Constitution. *Ex Parte Yarbrough*, 110 U.S. 651; *United States v. Gradwell*, 243 U.S. 476; *Burroughs and Cannon v. United States*, 290 U.S. 534; *United States v. Classic*, 313 U.S. 299.

That is not the point at issue. We can assume that Congress wrote the law it wanted and still we find that in all three cases interpreting that latest Congressional effort, the first before the Supreme Court of the United States, the second before the Second Circuit Court of Appeals, and the third before a District Judge, each court determined that Congress did not intend to include as an expenditure the respective violations charged therein—in each case the same charges as here—and all Justices and Judges stated that in their opinion any other interpretation would bring into question the constitutionality of the section—a possible defense, incidentally, that they indicated would have a great deal of merit. And so anx-

ious were the higher courts to avoid testing the constitutionality of the Act challenged in two of those three cited decisions, that they, of their own volition, changed the ground for sustaining the dismissal of the indictment to avoid the constitutional questions.

It is true that stress is laid in each of those three cases upon the alleged "triviality" of the charges; but, we ask, where is the line to be drawn? There is nothing in the Act that sets out any limit of demarcation of the amount expended before it becomes an "expenditure"; and this appears to this court to be very important. There is no minimum or maximum set on what is or is not "expenditure" and we believe that this court would be presumptuous in trying to write into the Act something that Congress avoided doing, 86 evidently because what it enacted might be unconstitutional, or to indulge in a new theory of what is or is not an expenditure, not suggested by our higher courts.

According to the authorities the Union was not making an expenditure on behalf of a political candidate. It desired to inform its members and others of the position of the Union on those seeking certain federal offices. It was exercising the right of free speech. The question then might present itself as to whether or not what the Union did was in fact "make a contribution". This might be important if the Union were charged with "making a contribution". It is not. It was so charged in *United States v. Construction & General Lab. L.U. No. 264*, supra, on very similar facts, but still the court held that its acts did not encompass either a "contribution" or "expenditure".

What then did Congress intend by "expenditure"? At least one court has enumerated possible acts of "expenditure" under Sec. 610 but we will not attempt it. What we will say, however, is that the Congress did not intend to write an unconstitutional law. *United States v. C.I.O.*, supra, p. 120. And it has been pointed out in the three above cases and in the debates of Congress, that to interpret this statute otherwise than has been done, is to jeopardize not only the right of every newspaper to print any political editorial during a campaign in which federal officers are elected, advocating one adversary over another, but it may also make remarks or speeches of any delegate or representative to a convention or gathering (other than a political meeting) subject to this Act, where the expenses of that delegate are being paid for by a union or corporation. (See the three cases cited supra and Congressional Record of Debates.)

It is also well to know that the arguments so ably advanced by the government's briefs were all presented to the courts in the three above cases, and still the decision went against the 87 government in each case. In fact, Mr. Warren Olney, III, appearing before Congress admitted that the Act was very

unsatisfactory and practically unenforceable. What possible justification could there be for this court to arbitrarily make, either an "addition" to the Act, or give it an "interpretation" which up to this day has not been attempted by either the Supreme Court of the United States, one of our Courts of Appeal or one of our District Judges? Undoubtedly there will be those who will not agree with the Supreme Court's interpretation of the word "expenditure" but it may well be that time will prove that the real intent of Congress, as stated and restated in the government's briefs, to-wit to destroy the power of any single group to control elections and to make more equal the forces which may battle for victory, will best be attained because of that interpretation. This has happened before.

As is our duty, we try to follow the law as laid down by our Supreme Court and there is no difficulty in doing so here. What the Supreme Court has said is not ambiguous to us.

If the District Judge can decide this case without ruling on the constitutional questions raised, he should do so. Since we believe that we can, we must not avoid our duty and make it necessary for the higher court to switch the grounds upon which the indictment must be dismissed. Our decision is that under the authorities the "expenditures" charged in this indictment are not expenditures prohibited by the Act. If appealed, our Supreme Court may determine otherwise and may at that time decide upon the law's constitutionality or remand to us. Until the Supreme Court enlightens us further, we have no other alternative but to follow the above authorities.

An order, dismissing the indictment, may be presented for our signature.

FRANK A. PICARD,

United States District Judge.

Dated: February 3rd, 1956.

Title 18 Federal Code Annotated, Section 591

"The term 'contribution' includes a gift, subscription, loan, advance, or deposit, of money, or anything of value, and includes a contract, promise, or agreement to make a contribution, whether or not legally enforceable;

"The term 'expenditure' includes a payment, distribution, loan, advance, deposit, or gift, of money, or anything of value, and includes a contract, promise, or agreement to make an expenditure, whether or not legally enforceable;"

Title 18 Federal Code Annotated, Section 610

"It is unlawful * * * for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

"Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than \$5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

"For the purposes of this section 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

89

[File endorsement omitted]

United States District Court Eastern District of Michigan
Southern Division

UNITED STATES OF AMERICA, PLAINTIFF

vs.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO) DEFENDANT

ORDER DISMISSING INDICTMENT—February 8, 1956

The above action having come on regularly to be heard on the 12th day of December, 1955, upon the motion of defendant to dismiss the indictment and the said motion having been submitted on briefs, all counsel having waived oral argument, and the Court being fully advised in the premises and having on the third day of February, 1956, filed the Opinion of the Court wherein it is

concluded that said motion should be granted and the indictment dismissed upon the ground that the expenditures charged in the indictment are not expenditures prohibited by law and that the indictment therefore fails to state facts sufficient to constitute an offense against the United States. Wherefore, it is

ORDERED, adjudged and decreed that the said action be, and the same hereby is, dismissed.

FRANK A. PICARD,
District Judge.

Dated: February 8th, 1956.

Approved as to form

GUY E. FUDS,
United States Attorney.

90 [File endorsement omitted]

United States District Court Eastern District of Michigan
Southern Division

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES
—Filed February 20, 1956

I. Notice is hereby given that the United States of America hereby appeals to the Supreme Court of the United States from the final order of the district court, entered February 8, 1956, dismissing the indictment which charged defendant with violations of 18 U.S.C. 610, as amended.

This appeal is taken pursuant to 18 U.S.C. 3731.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Transcript of docket entries
2. Indictment
3. Motion to dismiss the indictment
4. The opinion of the district court on the motion to dismiss
5. The order of February 8, 1956, dismissing the indictment
6. This notice of appeal

91-92 III. The following question is presented by this appeal:

Whether offenses under 18 U.S.C. 610, as amended, were charged in the indictment, each count of which alleged that on a specified date the defendant labor union made an expenditure of a specified sum from its general treasury fund, consisting of dues paid

by members of the union, to defray the expenses of a particular political television broadcast sponsored by the defendant over a commercial television station in which the defendant had no interest, which was intended to influence the electorate generally and urged and endorsed the election of certain candidates for United States Senator and Representative in Congress in the election held in Michigan in 1954.

SIMON E. SOBELOFF,
Solicitor General,
Department of Justice,
Washington 25, D. C.

FRED W. KAESSE,
United States Attorney,
Detroit 26, Michigan.

Return of Service (omitted in Printing)

- 93 Clerk's Certificate to foregoing transcript omitted in printing.

Supreme Court of the United States

94 ORDER NOTING PROBABLE JURISDICTION—April 23, 1956

APPEAL from the United States District Court for the Eastern District of Michigan.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

April 23, 1956

INDEX

	Page
Opinion below	1
Jurisdiction	1
Statute involved	2
Question presented	3
Statement	4
The question is substantial	5
Conclusion	13
Appendix	17

CITATIONS

Cases:

United States v. C. I. O., 335 U. S. 106. 5, 6-7, 10-11, 13

United States v. Construction and General Lab. L.

U., 101 F. Supp. 869..... 12

United States v. Painters Local Union, 172 F. 2d

854..... 11-12

Statute:

18 U. S. C. 610..... 2, 5, 6

Miscellaneous:

93 Cong. Rec.:

6439..... 7, 8

6440..... 7, 8

6447..... 8

6523..... 10

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. —

UNITED STATES OF AMERICA, APPELLANT

v.

INTERNATIONAL UNION UNITED AUTOMOBILE, AIR-
CRAFT AND AGRICULTURAL IMPLEMENT WORK-
ERS OF AMERICA (UAW-CIO)

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF MICHIGAN

STATEMENT AS TO JURISDICTION

OPINION BELOW

The opinion of the District Court (Picard J.) dismissing the indictment has not been reported. A copy is annexed hereto as an Appendix, *infra*, pp. 17-32.

JURISDICTION

On February 8, 1956, the District Court for the Eastern District of Michigan entered an order dismissing the indictment on the ground that it did not charge offenses under 18 U. S. C. 610

(App., *infra* pp. 32-33). A notice of appeal to this Court was filed in the District Court on February 20, 1956. The jurisdiction of this Court to review on direct appeal an order dismissing an indictment, based on a construction of the statute on which the indictment is founded, is conferred by 18 U. S. C. 3731.

STATUTE INVOLVED

18 U. S. C. 610 provides:

It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be

fined not more than \$5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, * * * in violation of this section, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both; and if the violation was willful, shall be fined not more than \$10,000 or imprisoned not more than two years, or both.

For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

QUESTION PRESENTED

Whether offenses under 18 U. S. C. 610 are charged in an indictment, each count of which alleges that on a specified date the defendant labor union made an expenditure of a specified sum from its general treasury fund, consisting of dues paid by members of the union, to defray the expenses of a particular political television broadcast sponsored by the defendant union over a commercial television station in which the defendant had no interest, which broadcast was intended to influence the electorate generally

and urged and endorsed the election of certain candidates for United States Senator and Representative in Congress in the election held in Michigan in 1954.

STATEMENT

The indictment charged four violations of 18 U. S. C. 610, in that the defendant, a labor organization as defined in the statute, did knowingly and unlawfully make expenditures from its general treasury funds in connection with a primary election held within the state of Michigan in 1954 to select candidates for Representatives in the Congress of the United States (Count 1) and in connection with a general election of a United States Senator and Representatives in Congress (Counts 2-4).

Each count charged the payment of a specified sum of money (ranging from \$700 to \$2,500) to a named company to defray the expenses of a political television broadcast over a named commercial television station in which the defendant union had no interest, urging and endorsing the selection of particular candidates. It was alleged that the telecasts included expressions of political advocacy and were intended by defendant to influence the electorate generally, including electors who were not members of defendant union, and to affect the results of said election.

Each count also alleged that the money expended was taken out of the general fund of the

defendant and not from any other source; that said general fund consisted of union dues paid by members of the local unions belonging to and affiliated with defendant; and that the expenditure was not made from voluntary political contributions or from subscriptions by defendant's members.

The District Court dismissed the indictment on the ground that the expenditures alleged were not within the purview of the term "expenditures" as used in 18 U. S. C. 610. It stated that it was so construing the statute, in the light of the opinion of this Court in *United States v. C. I. O.*, 335 U. S. 106, in order to avoid serious questions as to the constitutionality of the statute (App., *infra*, pp. 17-32).

THE QUESTION IS SUBSTANTIAL

The result reached by the District Court, dismissing on its face an indictment which charges political broadcasts out of general union funds in support of particular candidates in a particular election, can be achieved only by a holding that no broadcast by a union, paid for by union funds, can ever be an expenditure under 18 U. S. C. 610, no matter what the amount expended, the degree of political advocacy involved, or the role of the union's broadcasts in the candidate's campaign. Such an interpretation is contrary to the plain language of the statute, and flies in the face of the legislative intent. It goes far beyond the

decision of this Court in *United States v. C. I. O.*, 335 U. S. 106, as to the area of political activity permitted to unions under the statute, and results in the almost complete elimination of the term "expenditure" from the law. The policy of construing a statute to avoid serious constitutional issues does not justify so complete a rewriting of the statute which Congress has enacted.

1. There can be little doubt that the language of 18 U. S. C. 610, prohibiting an "expenditure" by a labor union in connection with an election, can cover, on its face, expenditures for political broadcasts such as are here alleged, union broadcasts for the specific purpose of urging the electorate generally to vote for particular candidates. In view of the known importance of broadcasting in present political campaigns, and the fact that broadcasts are to the public at large, it is difficult to conceive of "expenditures" which could more directly amount to practical participation in the political campaigns of individual candidates than would at least some types of political broadcasts by unions or corporations. In short, the literal terms of the statute are certainly broad enough to cover the precise charge which has been made here.

2. The legislative history also shows that Congress intended its prohibition against expenditures to apply, at the very least, to some political broadcasts in direct support of specific candidates in an election. As the opinion of the Court

in the *C. I. O.* case points out (335 U. S. at p. 115), the term "expenditure" was inserted because the prohibition against a "contribution" had been thought to be confined to direct gifts or direct payments. To avoid circumvention of the congressional aim through indirect contributions, the statute was extended to prohibit expenditures. Political broadcasts in support of specific candidates paid for out of general funds may well amount to the equivalent of an actual contribution to the political campaign of a candidate, a type of indirect contribution which the term "expenditure" was specifically designed to reach.

That Congress intended some political broadcasts to come within the term "expenditures" was made clear during the debates on the Taft-Hartley Act, of which the section under consideration was originally a part. The direct question was put by Senator Pepper, 93 Cong. Rec. 6439-6440:

* * * Suppose that in the 1948 campaign, Mr. William Green, as president of the American Federation of Labor, should believe it to be in the interest of his membership to go on the radio and support one party or the other in the national election, and should use American Federation of Labor funds to pay for the radio time. Would that be an expenditure which is forbidden to a labor organization under the statute?

Mr. TAFT. Yes.

Questions were then raised as to the use of radio time, normally paid for by a corporation to advertise its product, to advocate the election of a particular candidate. Senator Taft indicated that he thought there were matters of degree to be passed upon by the courts in the light of the particular facts. 93 Cong. Rec. 6439. In response to inquiries as to whether the proposed act would cover the guest appearance of a candidate on a radio program regularly sponsored by a union, Senator Taft said, 93 Cong. Rec. 6440:

If a labor organization is using the funds provided by its members through payment of union dues to put speakers on the radio for Mr. X against Mr. Y, that should be a violation of the law.

* * * * *

* * * Of course, in each case there is a question of fact to be decided. I cannot answer various hypotheses without knowing all the circumstances. But in each case the question is whether or not a union or a corporation is making a contribution or expenditure of funds to elect A as against B. Labor unions are supposed to keep out of politics in the same way that corporations are supposed to keep out of politics.

The issue again arose during the debates, as follows, 93 Cong. Rec. 6447:

Mr. TAYLOR. * * * Take the matter of a radio program sponsored by either a union or a corporation. I think the AFL or the CIO, one or the other, has a news commentator who comments on the news. Could he comment on political candidates favorably or unfavorably?

Mr. TAFT. If the General Motors Corp. had a man speaking on the radio every week to advocate the election of a Republican or a Democratic Presidential candidate, the corporation ought to be punished, and it would be punished under the law. Labor organizations should be subject to the same rule.

Mr. TAYLOR. That is altogether different. It is a more subtle thing. When a commentator is broadcasting the news every day he can do a lot more good or harm to a man by coloring his broadcast and presenting it in the guise of a news commentary than he could openly.

Mr. TAFT. The Senator is right. It is a question of fact which would have to be raised in every case. Is it a contribution to a candidate or is it not? Possibly a knock is a boost sometimes. That argument might well be made by a person who was taking part in an election.

Thus, while it was recognized that there might be issues as to whether, under the facts of a particular case, a particular broadcast fell within the

prohibition of the statute, there was no doubt that the law was meant, by its interdiction against "expenditures," to cover some forms of political broadcasting by unions. Even the opponents of the measure recognized this purpose (93 Cong. Rec. 6523).

In the face of this clear congressional purpose, the District Court was not warranted in ruling on the face of the indictment, without waiting for the particular facts as to the broadcasts to be developed at the trial, that *no* broadcast by a labor union can amount to an expenditure. Such a reading cannot be supported either by the language or the legislative history of the statute.

3. In holding that the term "expenditure" cannot apply to any broadcast by a union in support of particular candidates in a particular election, the court below has stepped far beyond the confines of the opinion of this Court in *United States v. C. I. O.*, 335 U. S. 106. In the *C. I. O.* case, an editorial in support of particular candidates appeared in the regular C. I. O. newspaper which was part of the union's regular activities. The Court specifically noted that it did not "read the indictment as charging an expenditure by the CIO in circulating free copies to nonsubscribers, nonpurchasers or among citizens not entitled to receive copies"; and that the allegation of that

indictment that 1,000 extra copies had been run off "charges nothing more" than that the extra copies "were distributed in regular course to members or purchasers" (335 U. S. at pp. 111-112). On that construction of the indictment, the Court ruled that the political advocacy represented by the editorial was not an "expenditure" within the meaning of the statute, stating, 335 U. S. at p. 123:

It would require explicit words in an act to convince us that Congress intended to bar a trade journal, a house organ or a newspaper, published by a corporation, from expressing views on candidates or political proposals in the regular course of its publication.

From the face of the present indictment, no special facts appear to bring it within the *C. I. O.* case. The funds expended are alleged to have been out of general funds, not out of any special contributions or subscriptions, and the broadcasts were over a commercial television station in which the union had no interest and were addressed to the general public.

United States v. Painters Local Union, 172 F. 2d 854 (C. A. 2), although it involved a political broadcast over a commercial radio station and a political advertisement in a daily newspaper of general circulation, also differs from the instant case. There, the particular facts had been devel-

oped at a trial at which the defendants had been found guilty, and the Court of Appeals rendered its decision on the basis of the specific facts proved at the trial. The expenditures for the advertisement and broadcast were expressly authorized at a special membership meeting of the union and the amounts involved were very small. The court pointed out that "this small union owned no newspaper and a publication in the daily press or by radio was as natural a way of communicating its views to its members as by a newspaper of its own." 172 F. 2d at p. 856. Insofar as the ruling turned on these special facts, it is no authority for the dismissal of the indictment in this case, for no such facts appear in this indictment which concerns a very large union, affirmatively alleges that substantial amounts were expended for each broadcast, and avers that the union's purpose was to influence the general public. If the *Painters* case is interpreted as going beyond its own narrow facts and as holding that no broadcast by a union can amount to an expenditure within the meaning of 18 U. S. C. 610, then, for the reasons discussed above, we think that it is incorrect and should not be followed.¹

¹ The other decision relied upon by the court below, *United States v. Construction and General Lab. L. U.*, 101 F. Supp. 869 (W. D. Mo.), also turned on its special facts, the court apparently believing that the amounts involved were too small to amount to either a contribution or expenditure. Since there was a directed verdict of acquittal, the government could not appeal.

4. Appellee contended in the District Court, and undoubtedly will argue in this Court, that if the statute is construed to cover any political broadcasts by unions out of general funds it is unconstitutional under the First Amendment. We recognize that the policy of construing statutes so as to avoid issues of constitutionality is an important consideration in the interpretation of this enactment. However, the purpose to prohibit the use of general union funds to pay for at least some types of political broadcasts, *i. e.*, those which amount to an indirect contribution to the campaign of a political candidate, is so clear, both from the language and legislative history of the statute, that we do not think the court below was warranted in dismissing the instant indictment on its face. To do that, the court had to conclude that *no* political broadcast by a union can amount to an "expenditure" under the statute, a result which completely redrafts the Act which Congress has passed.²

CONCLUSION

It is respectfully submitted that the decision below is erroneous, that the question presented

² The considerations which support the constitutionality of the statute are discussed in the government's brief in the *C. I. O.* case (No. 695, O. T. 1947), and we do not endeavor to expand upon them here. The District Court did not reach the question of constitutionality, but merely adverted to the constitutional issues as justification for its construction of the statute.

is substantial, and that the Court should take jurisdiction of this appeal.

SIMON E. SOBELOFF,
Solicitor General.

WARREN OLNEY III,
Assistant Attorney General.

BEATRICE ROSENBERG,
Attorney.

MARCH 1956.

APPENDIX

APPENDIX

United States District Court Eastern District of
Michigan Southern Division

No. 35004

UNITED STATES OF AMERICA, PLAINTIFF v. INTERNATIONAL UNION UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO), DEFENDANT

OPINION OF THE COURT

Motion to dismiss the indictment in the above matter, each of its four counts alleging a separate violation of Section 610, Title 18 of the Code, (Federal Corrupt Practices Act) prohibiting political expenditures by labor unions. The pertinent section is set out in the appendix together with the Act's definitions of "expenditure" and "contribution". (Sec. 591).

Here the specific charge is that the "expenditure" violation came in connection with the selection of candidates for a senator and representative to the United States Congress during the 1954 primary and general elections. It is alleged that defendant paid a specific amount from its general treasury fund to Luckoff and Wayburn Productions, Detroit, Michigan, to defray the costs of certain television broadcasts sponsored by the Union from commercial television station WJBK.

It is charged that the broadcasts urged and endorsed selection of certain persons to be candidates for representatives and senator to the

Congress of the United States and included expressions of political advocacy intended by defendant to influence the electorate and to affect the results of the election.

It is further charged that the fund used came from the Union's dues, was not obtained by voluntary political contributions or subscriptions from members of the Union, and was not paid for by advertising or sales.

FINDINGS OF FACT

For the purposes of this motion the charges alleged are taken as true. *United States v Jones*, 207 F. 2d 785; *Knoell v United States*, 239 Fed. 16; *United States v Van Auken*, 96 U. S. 366.

The contention of defendant is, first, that the expenditures, admittedly so made, are not the type of expenditures intended to be covered and prohibited by Section 610 of the Act. Six other reasons for dismissing the indictment follow, and all are to the effect that should this court find that the expenditures made by defendant are covered by Section 610, then the provisions of that section are unconstitutional because—

(a) They abridge both freedom of speech and of the press, peaceable assemblage and right of petition, in violation of the First Amendment;

(b) They unlawfully abridge the right to choose senators and representatives in Congress as guaranteed by the Seventeenth Amendment;

(c) They create an arbitrary and unlawful classification and discriminate against

labor unions, in violation of the Fifth Amendment;

(d) They are arbitrary and capricious, and deprive defendant and its members of liberty and property without due process of law—in violation of the Fifth Amendment;

(e) The statute is vague and indefinite, in violation of the Fifth and Sixth Amendments; and finally

(f) The provisions invade the rights of defendant and its members, under the Ninth and Tenth Amendments.

It will be particularly noted that six of the seven reasons advanced for dismissing the indictment are based upon the alleged unconstitutionality of the law. Therefore it becomes our duty under the decisions to determine whether or not defendant's first objection is valid for if we are able to determine that the conduct complained against is not proscribed by the Act, without passing upon the law's constitutionality, we must do so. *United States v C. I. O.*, 335 U. S. 106; *United States v Petrillo*, 332 U. S. 1, p 10; *United States v Rumely*, 345 U. S. 41-45; *Crowell v Benson*, 285 U. S. 22.

CONCLUSIONS OF LAW

In answer to that first objection we recall very briefly certain salient features in the history of the Federal Corrupt Practices Act. The first legislation of this type was enacted in 1907 and did not include labor unions in its prohibition; neither did it include the word "expenditure"

and as pointed out in *Newberry v United States*, 256 U. S. 232, it did not apply to "primaries". Admittedly it was not until 1947 that the word "expenditure" was written into the Act which then covered "primaries" and "contributions" of all kinds with a definition of the distinction noted between "expenditure" and "contribution". Since that final enactment (1947), which re-adopted the War Labor Disputes Act including unions and adding primaries, three tests and interpretations of what the law meant have been made, one by the Supreme Court of the United States, one by the Court of Appeals of the Second Circuit, and one by a District Court.

We examine those decisions.

UNITED STATES v. C. I. O. AND PHILIP MURRAY, 335
U. S. 106

The first interpretation of this statute (June 1948) was *United States v. C. I. O. and Philip Murray*, its president (335 U. S. 106). In that instance the C. I. O. had published a front page statement by Mr. Murray urging election of a certain congressional candidate in Maryland. This publication occurred in its regular C. I. O. News, a weekly, owned and published by the C. I. O. with money coming from the general funds of the Union (as in the case at bar) but with this additional feature; this particular issue of the News went not alone to the C. I. O. membership but extra copies were run off and distributed to the public.

On defendant's motion the District Court dismissed the indictment on the ground that the statute was unconstitutional as an unwarranted

abridgement of the First Amendment. On appeal the Supreme Court of the United States held that it had long been a policy that if the statute could be interpreted in a manner avoiding the constitutional question it should be, and the court, speaking through Mr. Justice Reed with these words, held that the prohibition in the Act against "expenditure" did not include an "expenditure" such as the one involved;

"We are unwilling to say that Congress by its prohibition against corporations or labor organizations making an 'expenditure in connection with any election' of candidates for federal office intended to outlaw such a publication."

Justice Frankfurter wrote a concurring opinion.

Four other Justices, however, with Mr. Justice Black, Mr. Justice Douglas and Mr. Justice Murphy, speaking through Mr. Justice Rutledge, agreed the indictment should be dismissed but on the ground that the entire section 313 (610) was unconstitutional. Meeting the question full on they said:

"If section 313 as amended (610) . . . can be taken to cover the costs of any political publication by a labor union, I think it comprehends the 'expenditures' made in this case. By reading them out of the section, in order to pass upon its validity, the Court in effect abdicates its function in the guise of applying the policy against deciding questions of constitutionality unnecessarily. I adhere to that policy. But I do not think it justifies invasion of the legislative function by rewriting or emasculating the statute. This in

my judgment is what has been done in this instance."

Mr. Justice Rutledge also notes that there is nothing in the Act as adopted that makes the "source" of the funds important. If the Union sponsored the "ad", it was immaterial whether the funds used came either through dues, from newspaper subscriptions, or a special fund raised for that purpose, although Senator Taft, who assumed the burden of defending this particular section in the Senate, differentiated between funds used from dues, and those subscribed for or raised for a certain special purpose. In that case also (C. I. O. News, *supra*) it was emphasized that the word "expenditure" was merely added to the Act to cover situations not previously included within the accepted legislative interpretation of "contribution". Justice Reed said—

"Apparently 'expenditure' was added to eradicate the doubt that had been raised as to the reach of 'contribution,' *not to extend greatly the coverage of the section.*" (Emphasis ours.)

Therefore we find that when the first decision interpretive of this Act was announced by the Supreme Court of the United States one District Judge and four Justices of the Supreme Court had held the section unconstitutional and five Justices of the Supreme Court refused to pass upon its constitutionality as unnecessary, but nevertheless dismissed the indictment because it did not state a cause of action, to-wit, "expenditure" didn't include the type of "expenditure"

made by the Union, although authorized by its president.

It will also be noted that Mr. Justice Reed's majority opinion states that unless the legislation is so construed

"the gravest doubt would arise in our minds as to its constitutionality." (Emphasis ours.)

UNITED STATES v. PAINTERS LOCAL UNION NO. 481,
172 F. 2D 854

The second case of interpretation was *United States v. Painters Local Union No. 481*, 172 F. 2d 854, decided by the Second Circuit Court of Appeals in 1949. The charge was against the Union and its President for placing and paying for a political ad in a *daily newspaper of general circulation and a political broadcast over a commercial radio station*, both out of funds from the general treasury of the Union.

In our opinion this case is on all fours with the case at bar except that it was a "television" broadcast instead of "radio"—which difference we do not deem important.

In *Painters Local Union*, supra, motion for dismissal by defendant was denied by the District Court which held the act constitutional. The question of whether these were "expenditures" within the meaning of the act was not raised by defendant nor discussed by the District Court and the case came to the Second Circuit supposedly solely on constitutional issues. Nevertheless that Court of Appeals reversed the District Court and, using the rationale of the Su-

preme Court in the C. I. O. opinion, *supra*, ruled on the scope of the statute and not on its constitutionality. It held that such political advertisements in a media of information commercially owned and of general circulation were no prohibited "expenditures". As Judge Hand stated—

"It seems impossible, on principle, to differentiate the scope of that decision (referring to *U. S. v C. I. O.*, *supra*) from the case we have before us."

We feel compelled to adopt that same language and repeat that the facts in *United States v Painters Local Union No. 481*, *supra*, and the matter before us are as alike as two peas in a pod.

Nor must we neglect to add that the Court of Appeals (Second Circuit) declared that it too had grave doubts concerning the constitutionality of the Act if the word "expenditure" were broadly construed.

It is interesting to note that here the government had a case made to order for appeal but no petition for certiorari was filed to the Supreme Court. See Mr. Justice Frankfurter's opinion—*Andres v United States*, 333 U. S. 740, at page 756, concerning a similar situation.

The government insists that a decision of the Second Circuit is not an authority we must follow. With this statement we agree. But District Courts have generally followed decisions of other Courts of Appeals which would decide the matter and where their own circuit had not yet spoken. *King v United States*, 10 F. Supp. 206; *Flannery v United States*, 25 F. Supp. 677;

The Bleakley No. 76, 56 F. 2d 1037. It is on the theory that such procedure is in the interest of promoting a single system for the administration of justice by having a uniform construction, and as stated in *Martyn v United States*, 176 F. 2d 609—

“We would not be justified in adopting a different construction of the Act than that which prevails in the Fourth and Ninth Circuits unless we were able to demonstrate that that construction was clearly wrong.”

**UNITED STATES v. CONSTRUCTION & GENERAL LABORERS
LOCAL UNION NO. 264, 101 F. SUPP. 869**

The third and final decision interpreting Section 610 is *United States v. Construction & General Laborers Local Union No. 264* and two officers, 101 F. Supp. 869, decided in 1951. It goes further than the case at bar. That indictment involved twelve counts and charged various kinds of “contributions or expenditures” by defendants contrary to the provisions of the Federal Corrupt Practices Act. In the case at bar there is no charge of “contribution” violation. The entire charge is devoted to “expenditure”.

In *General Laborers*, supra, the government proved that the President, business agent of the Union, had been a candidate for Congress, that the Union had paid certain expenses connected with his campaign, and that three of the Union employees, two of whom were on the Union's regular payroll, had been very active in his support. On Union time and increased pay, they had put up posters, passed out cards and

pamphlets, driven voters to register and to the polls election day, and had managed the "Freedom Train", a replica of the original Freedom Train, the vans of which contained copies of historical American documents as well as their candidate's campaign literature. One man on Union pay had worked around the candidate's home cutting the grass and in one instance \$200.00 was paid by the Union to some worker in connection with the candidate's campaign. There is no totalling up or reckoning of just how much money was expended directly or indirectly by the Union in this campaign but the court, rendering its opinion, stated—

"* * * it is hard to conceive that the Congress had in mind when it enacted this particular law, that an uncertain, insignificant amount such as is involved here should be considered as an expenditure and used as a basis for a criminal prosecution."

Here again the Court takes issue with the broad construction of the word "expenditure" urged by the government, adding

"Reiterating, it is difficult for me to believe that the Congress, with its vast knowledge of the practical application of its acts, intended such a restriction as is sought to be placed upon labor unions as here."

However, the distinction made by the District Court in the General Laborers case, *supra*, that it is not the "type" of activity that Congress had in mind but the "degree" of activity that should govern, does not impress us. We do not find anything in this Act that is authority for such a

statement. The rule of *de minimis non curat lex* does not apply to criminal cases. *United States v Construction and General Laborers (supra)*.

EFFECT OF THESE THREE DECISIONS

Having considered defendant's three authorities we find no case cited by the government otherwise interpreting this section of the Act, and its attempts to distinguish those cases from the case at bar are either futile or picayune. The government has, however, presently a very scholarly brief and advanced many arguments for denying the motion, tracing the history and objectives of this legislation from the first enactment of the Federal Corrupt Practices Act in 1907 when "money contributions" by corporations were prohibited, right down to the present amended version passed in 1947, where the word "expenditure" was added as a supplement to "contribution".

None of these three above cited cases, and surely not this court, challenges the right of Congress to pass any and all legislation deemed necessary to keep elections free from taint of fraud or coercion unless, of course, in those activities Congress violates provisions of the Constitution. *Ex Parte Yarbrough*, 110 U. S. 651; *United States v Gradwell*, 243 U. S. 476; *Burroughs and Cannon v United States*, 290 U. S. 534; *United States v Classic*, 313 U. S. 299.

That is not the point at issue. We can assume that Congress wrote the law it wanted and still we find that in all three cases interpreting that latest Congressional effort, the first before the Supreme Court of the United States, the second

before the Second Circuit Court of Appeals, and the third before a District Judge, each court determined that Congress did not intend to include as an expenditure the respective violations charged therein—in each case the same charges as here—and all Justices and Judges stated that in their opinion any other interpretation would bring into question the constitutionality of the section—a possible defense, incidentally, that they indicated would have a great deal of merit. And so anxious were the higher courts to avoid testing the constitutionality of the Act challenged in two of those three cited decisions, that they, of their own volition, changed the ground for sustaining the dismissal of the indictment to avoid the constitutional questions.

It is true that stress is laid in each of those three cases upon the alleged “triviality” of the charges; but, we ask, where is the line to be drawn? There is nothing in the Act that sets out any limit of demarcation of the amount expended before it becomes an “expenditure”; and this appears to this court to be very important. There is no minimum or maximum set on what is or is not “expenditure” and we believe that this court would be presumptuous in trying to write into the Act something that Congress avoided doing, evidently because what it enacted might be unconstitutional, or to indulge in a new theory of what is or is not an expenditure, not suggested by our higher courts.

According to the authorities the Union was not making an expenditure on behalf of a political candidate. It desired to inform its members and others of the position of the Union on those seek-

ing certain federal offices. It was exercising the right of free speech. The question then might present itself as to whether or not what the Union did was in fact "make a contribution". This might be important if the Union were charged with "making a contribution". It is not. It was so charged in *United States v Construction & General Lab. L. U. No. 264*, supra, on very similar facts, but still the court held that its acts did not encompass either a "contribution" or "expenditure".

What then did Congress intend by "expenditure"? At least one court has enumerated possible acts of "expenditure" under Sec. 610 but we will not attempt it. What we will say, however, is that the Congress did not intend to write an unconstitutional law. *United States v C. I. O.*, supra, p. 120. And it has been pointed out in the three above cases and in the debates of Congress, that to interpret this statute otherwise than has been done, is to jeopardize not only the right of every newspaper to print any political editorial during a campaign in which federal officers are elected, advocating one adversary over another, but it may also make remarks or speeches of any delegate or representative to a convention or gathering (other than a political meeting) subject to this Act, where the expenses of that delegate are being paid for by a union or corporation. (See the three cases cited supra and Congressional Record of Debates.)

It is also well to know that the arguments so ably advanced by the government's briefs were all presented to the courts in the three above cases, and still the decision went against the gov-

ernment in each case. In fact, Mr. Warren Olney III, appearing before Congress admitted that the Act was very unsatisfactory and practically unenforcible. What possible justification could there be for this court to arbitrarily make, either an "addition" to the Act, or give it an "interpretation" which up to this day has not been attempted by either the Supreme Court of the United States, one of our Courts of Appeals or one of our District Judges? Undoubtedly there will be those who will not agree with the Supreme Court's interpretation of the word "expenditure" but it may well be that time will prove that the real intent of Congress, as stated and restated in the government's briefs, to-wit to destroy the power of any single group to control elections and to make more equal the forces which may battle for victory, will best be attained because of that interpretation. This has happened before.

CONCLUSION

As is our duty, we try to follow the law as laid down by our Supreme Court and there is no difficulty in doing so here. What the Supreme Court has said is not ambiguous to us.

If the District Judge can decide this case without ruling on the constitutional questions raised, he should do so. Since we believe that we can, we must not avoid our duty and make it necessary for the higher court to switch the grounds upon which the indictment must be dismissed. Our decision is that under the authorities the "expenditures" charged in this indictment are not expenditures prohibited by the Act. If appealed,

our Supreme Court may determine otherwise and may at that time decide upon the law's constitutionality or remand to us. Until the Supreme Court enlightens us further, we have no other alternative but to follow the above authorities.

An order, dismissing the indictment, may be presented for our signature.

[Sgd.] Frank A. Picard,
United States District Judge.

Dated: February 3rd, 1956.

APPENDIX [TO OPINION OF DISTRICT COURT]

Title 18 Federal Code Annotated, Section 591

"The term 'contribution' includes a gift, subscription, loan, advance, or deposit, of money, or anything of value, and includes a contract, promise, or agreement to make a contribution, whether or not legally enforceable;

"The term 'expenditure' includes a payment, distribution, loan, advance, deposit, or gift, of money, or anything of value, and includes a contract, promise, or agreement to make an expenditure, whether or not legally enforceable;"

Title 18 Federal Code Annotated, Section 610

"It is unlawful * * * for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing officers, or for any

candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

"Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than \$5,000; and every officers or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

"For the purposes of this section 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

United States District Court Eastern District of
Michigan Southern Division

Indictment No. 35004. Viol: Title 18 USC
(Rev.) Section 610 as amended

UNITED STATES OF AMERICA, PLAINTIFF, v. INTER-
NATIONAL UNION, UNITED AUTOMOBILE, AIR-
CRAFT AND AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA (UAW-CIO), DEFENDANT.

ORDER DISMISSING INDICTMENT

The above action having come on regularly to be heard on the 12th day of December, 1955, upon the motion of defendant to dismiss the in-

dictment and the said motion having been submitted on briefs, all counsel having waived oral argument, and the Court being fully advised in the premises and having on the third day of February, 1956, filed the Opinion of the Court wherein it is concluded that said motion should be granted and the indictment dismissed upon the ground that the expenditures charged in the indictment are not expenditures prohibited by law and that the indictment therefore fails to state facts sufficient to constitute an offense against the United States. Wherefore, it is

ORDERED, adjudged and decreed that the said action be, and the same hereby is, dismissed.

[s] Frank A. Picard,
District Judge

Dated: February 8, 1956.

Approved as to form.

[s] George E. Woods,
Chief Asst. U. S. Attorney

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

UNITED STATES OF AMERICA, *Appellant*,

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO), *Appellee*.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN

MOTION TO AFFIRM

✓ HAROLD A. CRANEFIELD,
8000 East Jefferson Avenue,
Detroit 14, Michigan.

✓ JOSEPH L. RAUH, JR.,
1631 K Street, N. W.,
Washington 6, D. C.,
Attorneys for Appellee.

INDEX

	Page
Statement	1
Argument	4
I. <i>United States v. CIO</i> Governs the Instant Case	4
II. The Government's Position on This Statute Before the Indictment	12
Conclusion	16

Table of Cases

<i>Andres v. United States</i> , 333 U.S. 740, 756	12
<i>DeJonge v. Oregon</i> , 299 U.S. 353, 365	11
<i>Grosjean v. American Press Co.</i> , 297 U.S. 233, 250 ..	11
<i>Schneider v. State</i> , 308 U.S. 147, 161	11
<i>United States v. CIO</i> , 335 U.S. 106,	
3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 15, 16	
<i>United States v. Construction and General Laborers Local Union</i> , 101 F. Supp. 869 (W.D. Mo., 1951) ..	9, 13
<i>United States v. Painters Local #481</i> , 172 F. 2d 854 (C.A. 2d, 1949)	8-9, 12, 13

Statutes

Criminal Appeals Act	4
Taft-Hartley Act	6
Federal Corrupt Practices Act	13

Miscellaneous

Constitution: Article I, Section 2	3
First Amendment	3
Fifth Amendment	3
Sixth Amendment	3
Ninth Amendment	3
Tenth Amendment	3
Seventeenth Amendment	3
93 Congressional Record 6436-6440	5, 7
Hearings Before the Subcommittee on Privileges and Elections of the Committee on Rules and Administration, United States Senate, 84th Congress, 1st Session on S. 636, pp. 201, 202-3, 209-210	13, 15

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1955

No. 744

UNITED STATES OF AMERICA, *Appellant*,

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO), *Appellee*.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN

Motion to Affirm

Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves that the final judgment and decree of the United States District Court be affirmed on the ground that the questions on which the decision of the cause depends do not warrant further argument.

Statement

This is a direct appeal from the order of the United States District Court for the Eastern District of Michigan

dismissing the indictment against appellee on the ground that the indictment failed "to state facts sufficient to constitute an offense against the United States" (Statement as to Jurisdiction, p. 33).

Appellee was indicted on four counts, each alleging a separate violation of Section 610 of Title 18 of the United States Code, which prohibits political "contributions" and "expenditures" by labor unions. Each count alleges that the appellee is a labor organization as defined in Section 610 and that primary (Count I) and general (Counts II, III and IV) elections were held in 1954 in the State of Michigan to select candidates for, and senators and representatives in the Congress of the United States. It was further alleged in each count that appellee expended a specified sum from its general treasury fund to defray the expenses of preparation for and telecasting of political television broadcasts. The indictment set out that those television broadcasts urged and endorsed the selection of certain persons to be candidates for or representatives or senators in the Congress of the United States and that the telecasts included expressions of political advocacy and were intended by appellee to influence the electorate generally and to affect the results of the election.

Each count also alleged that the money for the expenditure came from the general fund of the union, consisting of union dues, and not from voluntary political contributions or subscriptions of members of the union and not from advertising or sales.

Appellee moved to dismiss the indictment upon the following grounds:

1. The provisions of Section 610 do not prohibit the payments set forth in the indictment.

2. The provisions of Section 610 abridge the freedom of speech and of the press, the right peaceably to

assemble and the right of petition of appellee and its members in violation of the First Amendment.

3. The provisions of Section 610 unlawfully abridge the right to choose senators and representatives in the Congress guaranteed by Article I, Section 2 and the Seventeenth Amendment.

4. The provisions of Section 610 create an arbitrary and unlawful classification and discriminate against labor organizations in violation of the Fifth Amendment.

5. The provisions of Section 610 are arbitrary and capricious and deprive appellee and its members of liberty and property without due process of law in violation of the Fifth Amendment.

6. The statute is vague and indefinite and fails to provide a reasonably ascertainable standard of guilt in violation of the Fifth and Sixth Amendments.

7. The provisions of Section 610 invade the rights of appellee and its members protected by the Ninth and Tenth Amendments.

On February 3, 1956, United States District Judge Picard dismissed the indictment, holding that "under the authorities the 'expenditures' charged in this indictment are not expenditures prohibited by the Act" (Statement as to Jurisdiction, p. 30). Judge Picard, after a thorough discussion of *United States v. CIO*, 335 U.S. 106, concluded (*ibid*):

"As is our duty, we try to follow the law as laid down by our Supreme Court and there is no difficulty in doing so here. What the Supreme Court has said is not ambiguous to us."

On February 8, 1956, Judge Picard entered the order dismissing the indictment (Statement as to Jurisdiction, pp. 32-33).

On March 9, 1956, the appellant's Statement as to Jurisdiction was filed in this Court.

Argument

I

UNITED STATES v. CIO GOVERNS THE INSTANT CASE

The decision of the District Court is plainly correct; as Judge Picard held, this case is clearly governed by *United States v. CIO*, *supra*.

That case involved an indictment against the Congress of Industrial Organizations and Philip Murray, its President, arising out of the publication in the CIO News, a weekly published by the CIO from its general funds, of a front-page statement by Mr. Murray urging that a particular candidate be supported in the special Congressional election to be held in Maryland. The district court sustained a motion to dismiss the indictment on the ground that the statute was unconstitutional as an unwarranted abridgment of First Amendment freedoms. In arguing the Government's direct appeal under the Criminal Appeals Act, both the Government and the CIO touched only upon the constitutionality of the statute. No argument was made by either side concerning the propriety of the indictment under the Act. Nevertheless, a majority of this Court, emphasizing the Court's obligation to avoid the necessity of constitutional determinations, considered first whether the indictment stated an offense under the statute, and held that the Act did not cover the publication by a union from its general funds of a regular periodical advocating the election to office of particular candidates. *United States v. CIO*, 335 U.S. 106. The Court came to this interpretation

on the basis that any other would involve "the gravest doubt" of the constitutionality of the statute (335 U.S. at p. 121) and would not give due recognition to the fact that "Congress was keenly aware of the constitutional limitations on legislation and of the danger of the invalidation by the courts of any enactment that threatened abridgment of the freedoms of the First Amendment" (335 U.S. at p. 120). Four Justices concurred in the result, holding that the Act clearly violated the rights of freedom of speech, press and assembly secured by the First Amendment.

In the *CIO* case, this Court specifically ruled that expenditures in publishing a union newspaper and distributing copies thereof to those accustomed to receive them are not "expenditures" within the meaning of Section 610. The court below could find no distinction in the statute between payments to make possible the expression of the union's views in a union newspaper and payments to make possible the expression of the union's views over a commercial television station. Certainly there is no statutory language on which such a distinction could be predicated. Equally clearly, the legislative history offers no ground for any such distinction; indeed, the discussion on the floor of the Senate evidenced a concern with the expression of union views through a union newspaper at least as great as with the expression of a union's views through commercial channels. 93 Cong. Rec. 6436-6440. Furthermore, the policy of interpreting a statute in such a way as to avoid constitutional questions applies with at least equal force to the indictment now before the Court.

We turn now to the four points suggested by the Government in its Statement as to Jurisdiction as grounds for upholding the indictment in the face of the *CIO* case.

1. The Government suggests that "union broadcasts for the specific purpose of urging the electorate generally to

vote for particular candidates" fall within the literal meaning of the term "expenditure" (Statement as to Jurisdiction, p. 6). Admittedly this is so. But no less did the expenses involved in the *CIO* case for the publication and distribution of the union's views through a union periodical fall within the literal meaning of the term "expenditure". Yet, because of the Court's obligation to avoid grave constitutional issues and because the word "expenditure" had been added to the statute "to eradicate the doubt that had been raised as to the reach of 'contribution,' not to extend greatly the coverage of the section" (335 U.S. at p. 122), the Court narrowed the literal terms of the word "expenditure" to exclude a union's expression of views in a union periodical. The Government suggests no reason why the literal meaning of the term "expenditure" is any more applicable in the case now before the Court than on the facts presented in the *CIO* case nor why the same considerations which led the Court to narrow the application of the term "expenditure" in the *CIO* case are not equally present in this case.

2. Next, the Government relies upon legislative history and particularly upon a colloquy between Senator Pepper and Senator Taft during the debates on the Taft-Hartley Act (Statement as to Jurisdiction, p. 7), of which the section under consideration was originally a part. The colloquy follows:

"Mr. Pepper: • • • Suppose that in the 1948 campaign, Mr. William Green, as president of the American Federation of Labor, should believe it to be in the interest of his membership to go on the radio and support one party or the other in the national election, and should use American Federation of Labor funds to pay for the radio time. Would that be an ex-

penditure which is forbidden to a labor organization under the statute?

"Mr. Taft: Yes."

But in this very same debate from which the Government quotes, Senator Taft gave the identical answer with respect to the expression of a union's views in a union periodical.¹ When asked whether a labor house organ would be permitted under the pending bill to carry an endorsement for a candidate considered friendly to labor, Senator Taft replied, "If it were supported by union funds contributed by union members as union dues it would be a violation of the law." 93 Cong. Rec. 6436. The same opinion was expressed by Senator Taft in another part of this same discussion:

"Mr. Magnuson. . . . They [labor groups] publish so-called labor organs, and a part of a member's dues goes to subscribe for the labor organ. If such an organ were not published the member's dues would be correspondingly less. . . . But now unions collect the subscription along with the dues.

"Mr. Taft. The case is the same as the case of a corporation house organ. A corporation house organ is published and sent out to employees, sometimes many thousands of them. A corporation which used such a house organ to try to elect or defeat a political candidate would certainly be violating the law, in my opinion. Such a law has been in existence for 25 years.

¹ Both parties in the *CIO* case assumed that the legislative history supported the proposition that the expenses of publishing a union newspaper from union funds constitute "expenditures" within the meaning of the statute. Brief for the United States, *United States v. CIO*, No. 695, October Term 1947, p. 44 *et. seq.* and Brief for the Congress of Industrial Organizations, *United States v. CIO*, No. 695, October Term, 1947, p. 56.

What we are now doing is to write into the law the same prohibition with respect to labor organizations as now exists with respect to corporations." 93 Cong. Rec. 6440.

✓ In the *CIO* case, this Court rejected Senator Taft's views as to the meaning of the word "expenditure" in connection with the expression of a union's views in a union periodical, explaining that "it would require explicit words in an act to convince us that Congress intended" such a result.² The Government fails to suggest any reason why this Court should give greater significance to Senator Taft's comment on radio stations than it did to his comment on union periodicals and there are no explicit words in the Act to convince the Court that Congress intended the result urged by the Government.

3. The language of the statute and the legislative history applying with equal force to the facts in the *CIO* case as to those in the case at bar, the Government simply announces that the cases are different because, in the case at bar, "the broadcasts were over a commercial television station in which the union had no interest and were addressed to the general public" (Statement as to Jurisdiction, p. 11). But the significance of this factual difference is nowhere stated and no court has ever found this difference of decisional significance.

✓ The United States Court of Appeals for the Second Circuit could find no legal distinction in this factual difference relied upon by the Government. *United States*

² This Court's rejection of Senator Taft's statements may have been facilitated by the circumstance that the Senator had no part in the origination of the "election expenditures" provision of the Act (Section 304, now 18 U.S.C. § 610). The provision was in the House bill, H.R. 3020, § 304, but not included in Senator Taft's bill, S. 1126. It was passed by the House, accepted by the Senate Conferees and subsequently debated by Senator Taft and others on the floor of the Senate.

v. *Painters Local Union #481*, 172 F. 2d 854 (C.A. 2nd, 1949).³ The indictment in that case alleged that the defendant union (and its President) had placed and paid for a political advertisement in a daily newspaper of general circulation and had paid for and sponsored a political broadcast over a commercial radio station. The funds for these expenses were derived from the general treasury of the union. Both the advertisement and the radio broadcast advocated the defeat of Senator Taft as a candidate for the presidency and the rejection of all incumbent Republican congressmen.

The Court of Appeals for the Second Circuit found no violation of the statute on those facts. Judges A. Hand, Clark and Frank constituted the bench, and, like this Court in the *CIO* case, avoided the constitutional issue by a ruling on the scope of the statute. They held that payments for political advertisements in media of information commercially-owned and of general circulation were not prohibited "expenditures". Judge Hand, writing for the Court, said (page 856) that "It seems impossible, on principle, to differentiate the scope of that decision [*United States v. CIO*] from the case we have before us" and he noted that any differentiation between a union-owned newspaper such as was involved in the *CIO* case, and an independent newspaper or radio station "seems without logical justification; nor is such a differentiation suggested by the apparent purposes or by the terms of the statute or by its legislative history."⁴

³ See also *United States v. Construction and General Laborers Local Union*, 101 F. Supp. 869 (W.D. Mo., 1951).

⁴ The Government's distinction of the *Painters Local* case is that the expenditures there were "very small" and were expressly authorized at a special membership meeting of the union (Statement as to Jurisdiction, p. 12). But there is nothing in the word "expenditures", in the legislative history, or in the constitutional principles here at stake which warrants the drawing of a line based on the size of the expenditures; indeed such a line, by its very vagueness, would create more problems than it

4. Finally, the Government, although conceding the importance of construing statutes so as to avoid constitutional issues, nevertheless suggests that the result below "completely redrafts the Act which Congress has passed" (Statement as to Jurisdiction, p. 13). The Government does not suggest, however, why it is more of a redraft to exclude expenditures for a broadcast of the union's views over a commercial station than it is to exclude expenditures for expressing the union's views through a union newspaper. Certainly the constitutional issue of free speech, which the Court sought to avoid in the *CIO* case, is present in both situations. For, as Judge Picard put it, appellee "desired to inform its members and others of the position of the Union on those seeking certain federal offices. It was exercising the right of free speech." (Statement as to Jurisdiction, pp. 28-29). Indeed, since the union was here seeking to communicate with the public at large, rather than simply a segment of the public (its own membership), it was exercising the more traditional right of free speech.⁵ It is this very communication with the public

settled. Judge Picard said he thought it would be "presumptuous" for the courts to write into the statute a distinction based on the amount of the expenditure nowhere suggested by Congress (Statement as to Jurisdiction, p. 28). As to the other alleged distinction—authorization at a special membership meeting—this is a total irrelevancy as far as the statute is concerned; indeed, there is no suggestion in the indictment that appellee did not act with the full authority of the appropriate governing body of the appellee union.

⁵ The Government mildly suggests that the expenditure of funds to inform the public of the union's views on a federal election might constitute an "indirect contribution to the campaign of a political candidate" (Statement as to Jurisdiction, p. 13). It is certainly questionable whether the expression of the union's views could ever constitute a contribution, direct or indirect, but however that may be, this point is not in the case. The indictment does not allege a "contribution" and Government counsel in oral argument in the court below expressly waived this point. The following colloquy appears at page 10 of the transcript:

"The Court: . . . Now, your position is that they just merely wanted to make sure that contributions which you do not question,—

at large that brings about the "free political discussion" (*DeJonge v. Oregon*, 299 U.S. 353, 365) and the "informed public opinion" (*Grosjean v. American Press Co.*, 297 U.S. 233, 250) which "lies at the foundation of free government by free men." *Schneider v. State*, 308 U.S. 147, 161.

One other point, or rather implication, by the Government might be noted. The Government suggests at page 5 that the District Court held in effect "that *no* broadcast by a union, paid for by union funds, can ever be an expenditure" under the statute and again at page 13 that "the court had to conclude that *no* political broadcast by a union can amount to an 'expenditure' under the statute." This is a misreading both of the indictment and of the District Court's holding. The indictment charged appellee with "urging and endorsing" the selection and election of particular candidates. The District Court interpreted the indictment as charging appellee with expenditures "to inform its members and others of the position of the Union on those seeking certain federal offices" (Statement as to Jurisdiction, pp. 28-29). In other words, the indictment on its face and as interpreted by the court below simply charges that appellee sought to inform its members and the public of the position of the union. A holding that such an indictment fails to charge an offense under the statute is a far cry from a holding that "*no* political broadcast by a union can amount to an 'expenditure' under the statute." If in fact there was something specially significant about the particular broadcasts covered by the indictment which went beyond urging and endorsing the selection and election of particular candidates, it was

and neither side claims that this is a contribution within the meaning of the statute, do you?

"Mr. Woods: No."

Mr. Woods is Chief Assistant United States Attorney and represented the Government before Judge Picard.

up to the indictment to charge these specially significant facts. What the Government is really complaining about now is the terms of its own indictment which alleges facts legally indistinguishable from those in the *CIO* case.

II

THE GOVERNMENT'S POSITION ON THIS STATUTE BEFORE THE INDICTMENT

We have already seen (*supra*, pp. 8-9) that as early as 1949 the Court of Appeals for the Second Circuit held that payments for a commercial broadcast to express a union's political views were not expenditures within the meaning of the statute. From this decision on facts identical with the case at bar no petition for certiorari was filed by the United States. To quote Mr. Justice Frankfurter's concurring opinion in *Andres v. United States*, 333 U.S. 740, 756, commenting on a similar failure: "While a failure of the Government to seek a review of that decision by this Court has no legal significance, acquiescence by the Government in an important ruling in the administration of the criminal law . . . carries intrinsic importance where the construction in which the Government acquiesced is not one that obviously is repelled by the policy which presumably Congress commanded."

For six years after the decision in the *Painters Local* case, no prosecutions were brought against unions for the expression of their views via commercial newspapers and radio and television stations and the unions were free to express their election views. The reason for this inaction by the Government was given by the Assistant Attorney General of the United States, in whose jurisdiction prosecution of cases under this statute falls. Assistant Attorney General Warren Olney, III, in charge of the Criminal Division, testified in May, 1955, in hearings on possible

amendments to the Federal Corrupt Practices Act,⁶ that because of the shortcomings in this statute, there have been only three prosecutions under this section.⁷ He attributed this result to what he described as the "view that the [Supreme] Court takes as to the importance of leaving open all media of public expression for political candidates and for supporters." He went on to say that, although the Supreme Court had not directly ruled on the constitutionality of the statute, "out of the 9 members of the Supreme Court there was not 1 that expressed the view that section 313 [18 U. S. C. § 610] was constitutional. There were 4 of them who were of the view that it was not, and the majority, the other 5, did not pass on the question, but put a caveat in their opinion that they had serious doubt about the constitutionality of it."

Mr. Olney went on to discuss a proposed amendment to the Act which would require consent or authorization by a candidate before a committee could engage in certain types of political activity. Mr. Olney said:

"The implication of the language of all the judges, both the dissenting and the majority opinions in that case [*United States v. CIO, supra*] is that they have serious doubts about a law which says that a group of people interested in a campaign cannot really—and that means without restrictions even as far as finances are concerned—engage in political activity. They indicate a clear reservation that it may be affected by the first amendment that guarantees freedom of the press and of speech.

"In this provision, the way it is worded now, you

⁶ Hearings before the Subcommittee on Privileges and Elections of the Committee on Rules and Administration, United States Senate, 84th Cong., 1st Sess., on S. 636, pp. 201, 202-203, 209-210.

⁷ The *CIO* case, *supra*; the *Painters Local* case, *supra*; the *Construction and General Laborers* case, *supra*.

see, it is not aimed at requiring the publication of information so that it is fair to the voters, it is a prohibition against the committee collecting money or actively supporting the candidate, if the candidate doesn't want them. . . .

"The thing that it would require is an open public disclosure of the fact as to whether the activity is endorsed by the candidate whom it is supporting, or whether it isn't.

"I do think that the question of the constitutionality of that section is important. And I have serious reservations about it."

Mr. Olney was then questioned by the Committee members, and the following colloquy ensued:

"Mr. Duffy. You also referred to the constitutional question which arises as concerns section 304 of this proposed bill which purports to amend section 610 of title 18, which I believe is the same as the Taft-Hartley Act as it stands today.

"Do you believe that it would be better to leave section 610 of title 18 exactly as it is, or do you think that by allowing it to stand unchanged you would still be confronted with the constitutional problem as stated in the CIO case?

"Mr. Olney. Well, if section 304 of 636 is enacted, it still will not affect the dilemma and the difficulty that we are faced with because of the CIO decision.

"Mr. Duffy. It wouldn't help you at all?

"Mr. Olney. No, it wouldn't.

"Mr. Duffy. In fact, it might increase the difficulty; is that true?

"Mr. Olney. Yes; simply because it would be a new expression by Congress reaffirming this same statute

notwithstanding the CIO decision. I am sure you can imagine the consternation of my predecessors when the Supreme Court disposed of that CIO case by ducking the issue. They just didn't pass on the constitutional point. *They expressed so many doubts about it, all of them did, that it made it almost impossible, certainly impractical, to prosecute under it.*" (Emphasis supplied).

Thus, as of May, 1955, this Court's decision in the CIO case made it "almost impossible, certainly impractical, to prosecute" under Section 610. One can only speculate on what happened after May, 1955, to cause the Department of Justice to reverse its position and seek to prosecute under the statute.⁸ Certainly no judicial decision intervened and indeed the only judicial decision between Mr. Olney's statement before the Senate Committee and the Government's Statement as to Jurisdiction in this Court is Judge Picard's decision following the CIO case in line with Mr. Olney's testimony. We do not refer to Mr. Olney's pre-indictment position here to embarrass either him or the Government, but rather to point out how recent is the presently proffered distinction of the CIO case and how different is the Government's position here today from its objective judgment prior to this indictment.

⁸ Shortly after Mr. Olney testified, the Chairman of the Republican State Central Committee of Michigan, one John Feikens, testified before the Subcommittee on Privileges and Elections. Mr. Feikens made a number of allegations concerning expenditures by labor unions for political purposes and specifically referred to the series of television broadcasts with which this indictment is concerned (Hearings, *supra*, n. 6, at pages 236, 242).

Conclusion

It is respectfully submitted that the decision below is correct and governed by the *CIO* case. The motion to affirm should be granted.

Respectfully submitted,

HAROLD A. CRANFIELD,
8000 East Jefferson Avenue,
Detroit 14, Michigan,
JOSEPH L. RAUH, JR.,
1631 K Street, N. W.,
Washington 6, D. C.,
Attorneys for Appellee.

APRIL, 1956.

(8050-7)

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 744

UNITED STATES OF AMERICA, APPELLANT

v.

INTERNATIONAL UNION UNITED AUTOMOBILE, AIR-
CRAFT AND AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA (UAW-CIO)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

**BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO AFFIRM
AND APPELLANT'S MOTION TO ADVANCE**

ARGUMENT

The fundamental error in appellee's motion to affirm lies in the statement on page 11 that the holding of the District Court that this indictment fails to charge an offense under the statute is a far cry from a holding that "no political broadcast by a union can amount to an 'expenditure' under the statute." There is nothing on the face of this indictment which defines or limits the nature of the broadcasts charged. The in-

dictment alleges the expenditure of substantial sums of money out of general union funds to pay the expenses of broadcasts over a commercial television station "urging and endorsing" the selection and election of particular candidates. *Any* political broadcast by a union, to be political, must necessarily urge and endorse the selection or election of particular candidates. To the extent that this is so, *any* political broadcast under the auspices of a union does, in the words of the District Court, state the position of the union and would therefore not be covered by the statute. We can conceive of no union broadcast, no matter how aggressive the electioneering on behalf of particular candidates, which would not be within the scope of the District Court's ruling.

Conversely, there is nothing on the face of this indictment which does not permit the government to prove that the broadcasts here charged were out-and-out electioneering of the most flagrant type. For example, it would be entirely consistent with the allegations of this indictment if the proof showed that the union paid for a series of broadcasts which consisted only of the constant repetition of a slogan, such as "Vote for Mr. X, the union's friend." This would be a broadcast stating the union's position on a particular candidate and it would be, in the terms of the indictment, a broadcast "urging and endorsing" the election of a particular candidate. But it would also be

a very different type of broadcast and involve different considerations of constitutionality than would a broadcast reviewing the union's position on current issues affecting labor. Without endeavoring here to go into matters of constitutionality, we think it is enough to suggest that inasmuch as a labor union is an entity composed of many individuals, not necessarily of the same political persuasion, there can well be a difference in constitutional terms between a prohibition of general expressions of opinion which directly relate to the particular purposes for which the entity was organized, and expressions of political advocacy which have a more indirect bearing on the proper interests of the entity and amount to much greater participation in the active political campaign of a particular candidate. It is enough for present purposes to point out that the difference exists and that the District Court failed to note that the allegations of this indictment would cover the latter type of broadcast.

As we point out in our Statement as to Jurisdiction, in view of the admittedly great significance of television and radio broadcasts in present day campaigns, there can, we believe, be no doubt that a political broadcast on behalf of a particular candidate can amount to an indirect, almost a direct, contribution to his political campaign. The fact that the indictment does not charge a contribution is not significant. As this Court noted in *United States v. C. I. O.*, 335

U. S. 106, 116, the term "expenditure" was inserted in the statute because "contribution" had been narrowly interpreted in such a way that it "could easily be circumvented through indirect contributions." Our point is that political broadcasts can be the type of expenditures that, while not technically and formally contributions, amount to indirect contributions to the political campaign of a candidate, and that there is nothing in this indictment to show that the broadcasts here involved do not have that character.

Certainly, political broadcasts out of general funds *can* be an "expenditure" condemned by the statute. The difference between a general statement of position as part of the union's normal activities and special expenditures for out-and-out electioneering was noted by this Court in the *C. I. O.* decision (335 U. S. at pp. 122-123) when it said:

It is one thing to say that trade or labor union periodicals published regularly for members, stockholders or purchasers are allowable under § 313 and quite another to say that in connection with an election occasional pamphlets or dodgers or free copies widely scattered are forbidden.

This Court thus recognized that there was a distinction, on the one hand, between general statements of position addressed primarily to the

union's own members, and, on the other hand, active electioneering addressed to the public at large.

This, in the field of written publications, is a distinction that can pertain, *mutatis mutandis*, to oral communications as well—a distinction between the normal avenues for expression of the opinion of the union to its own members on matters which directly concern the purposes for which it was organized, and the special use of funds contributed by all members, whatever their political persuasion, in support of the public political campaign of a particular candidate. Whether any particular broadcast falls on one side of this line or another is a question of fact to be determined on the basis of all the relevant evidence which must be developed at a trial and which cannot, and properly should not, be alleged in the indictment. See *United States v. Petrillo*, 332 U. S. 1, 11-12. Since the allegations of this indictment would permit proof of such active public electioneering by the union out of general funds, it was error to dismiss the indictment for failure on its face to state an offense.

It is, of course, true that any broadcast, even of the electioneering variety, does involve speech, and to the extent that such speech paid for out of general funds is prohibited, there will be issues under the First Amendment. This Court has, however, recognized that the policy of avoid-

ing constitutional issues cannot justify the complete rewriting of a statute which Congress has passed. "A restrictive interpretation should not be given a statute merely because Congress has chosen to depart from custom or because giving effect to the express language employed by Congress might require a court to face a constitutional question." *United States v. Sullivan*, 332 U. S. 689, 693. As this Court there pointed out, the cases applying the principle of strict construction do not authorize "a court in interpreting a statute to depart from its clear meaning." And the Court went on (pp. 693-4):

* * * When it is reasonably plain that Congress meant its Act to prohibit certain conduct, no one of the above references justifies a distortion of the congressional purpose, not even if the clearly correct purpose makes marked deviations from custom or leads inevitably to a holding of constitutional invalidity. Although criminal statutes must be so precise and unambiguous that the ordinary person can know how to avoid unlawful conduct, see *M. Kraus & Bros., Inc., v. United States*, 327 U. S. 614, 621, 622, even in determining whether such statutes meet that test, they should be given their fair meaning in accord with the evident intent of Congress. *United States v. Raynor*, 302 U. S. 540, 552.

While, therefore, we recognize that the principle of avoiding constitutional issues must be taken into consideration, we do not believe that it can justify the interpretation, necessary to warrant dismissal of this indictment, that *no* political broadcast by a union endorsing particular candidates, paid for out of general funds, can ever amount to an "expenditure." At the least, the statute is reasonably interpreted as applying to the types of political broadcasts, paid for out of general funds, that represent special expenses for active electioneering on behalf of particular candidates. The point here is that, even on this narrow interpretation, the District Court was not justified in dismissing the instant indictment for failure to state an offense under the statute.¹

¹ For this reason, we fail to see why respondents think they derive assistance from the remarks of Assistant Attorney General Olney before a Congressional committee that the constitutional doubts expressed in the *C. I. O.* opinions rendered the statute ineffective. The *C. I. O.* decision admittedly left open avenues of union activity which at least some sponsors of the legislation intended to close. With those avenues open, and through the means of separate funds established by voluntary contributions, there is no doubt that labor unions have been able to engage in extensive political activity without violating the statute. This does not mean, and Mr. Olney did not suggest that, where a union chooses not to work within permissible limits, where it uses general rather than special funds for political expenses of the electioneering variety, no violation can occur. Rather, his testimony was to the effect that the approach of publicity might well be considered as another method of dealing with the problem.

In taking the view that at least certain political broadcasts by unions can amount to the type of indirect expenditure which the statute was designed to reach, we do not rely wholly on the specific legislative history dealing with broadcasts, although we do not think that it should be utterly disregarded. We recognize that by the decision in *United States v. C. I. O.*, this Court interpreted the statute less broadly than some of the proponents of the legislation may have conceived its coverage to be. Similarly, in both *United States v. Rumely*, 345 U. S. 41, and *United States v. Harriss*, 347 U. S. 612, this Court adopted a more restrictive interpretation of the term "lobbying" than statements on the floor of Congress indicated was within the minds of some of the legislators when they used that term. But to read the term "expenditure" as it must be read to uphold the decision of the District Court—so as to exclude from its coverage all political broadcasts by the union urging and endorsing particular candidates—is to give it an interpretation which deprives it of all substantial meaning and to disregard, not only statements as to particular applications of the words used, but the whole history and purpose of the statute. Respondents do not dispute that, as this Court noted in the *C. I. O.* case (335 U. S. at p. 116), the word "expenditure" was inserted to prevent the evasion of the prohibition against

"contributions" by expenditures which in practical realities amount to contributions to the campaign of a candidate. Political broadcasts urging and endorsing the election of a particular candidate can amount to an indirect contribution to his campaign. Since that may be proved under this charge, it was error to dismiss the indictment.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the motion to affirm should be denied and that probable jurisdiction should be noted.

In view of the importance of the question at this time, we respectfully request the Court to advance the cause for argument and decision at this term.

Respectfully submitted,

SIMON E. SOBELOFF,
Solicitor General,
WARREN OLNEY III,
Assistant Attorney General.
BEATRICE ROSENBERG,
Attorney.

APRIL 1956.

APR 19 1955

HAROLD B. WILLEY

No. ~~744~~ 44

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

UNITED STATES OF AMERICA,

Appellant,

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO),*Appellee*APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN

REPLY MEMORANDUM OF APPELLEE

✓ HAROLD A. CRANEFIELD,
8000 East Jefferson Avenue,
Detroit 14, Michigan;✓ JOSEPH L. RAUH, JR.,
1631 K Street, N. W.,
Washington 6, D. C.,
Attorneys for Appellee.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 744

UNITED STATES OF AMERICA,

v.

Appellant,

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO),

Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN

REPLY MEMORANDUM OF APPELLEE

In its Brief in Opposition to Appellee's Motion to Affirm, the Government completely alters its attempted distinction of *United States v. CIO*, 335 U. S. 106. The Government had placed its sole emphasis in arguing before the District Court, and its major emphasis in its Statement as to Jurisdiction here, upon the difference between a union expressing its point of view on candidates to its members through a "house organ" and expressing its point of view on candidates to the general public and its members through a commercial television station. Now, in its Brief in Opposition to Appellee's Motion to Affirm, the Government relies for its distinction of the *CIO* case exclusively upon the argument that appellee is here charged with some unspecified

type of flagrant electioneering rather than with merely expressing its point of view on candidates. In other words, the Government has shifted its ground of distinction of the *CIO* case from the *means* of communication to the *contents* of the communication. This shift comes too late.

The fatal flaw in the Government's belated position is that it disregards the construction of the indictment by the District Court and asks this Court to construe the indictment *de novo*. The District Court's construction of the indictment as one charging appellee with payments to inform its members and the public of its position on candidates destroys the Government's newly-attempted distinction of the *CIO* case based on the difference in the contents of the union-sponsored statements in the two cases. On a direct appeal under the Criminal Appeals Act, the District Court's construction of the indictment is not open to examination by this Court. *United States v. Borden Co.*, 308 U. S. 188, 193; *United States v. Keitel*, 211 U. S. 370.

The indictment charges appellee with "urging and endorsing" the selection and election of Congressional candidates through televised expressions of political advocacy to the general public, as well as to members of the union. Appellee read the indictment, and so indicated in its brief in the court below, as charging the union with payments "to make known to its members and to the public its position on elections of significance to the union and its members" or, put another way, as charging the union with payments to present "its views on candidates to its members and the public through normal channels of communication" (Brief in Support of Defendant's Motion to Dismiss the Indictment, pp. 3, 27).

Neither at the informal oral hearing before District Judge Picard nor in its initial or reply briefs in the court below did the Government suggest that appellee's interpretation of the indictment was erroneous. Its efforts to avoid

the force of the *CIO* decision were not predicated upon the distinction it urges in this Court; rather the Government based its entire argument in the court below on the difference between expenditures for a union newspaper and a commercial television broadcast.

There being no dispute below on the meaning of the indictment, the District Court quite naturally construed it as alleging union expenditures "to inform its members and others of the position of the Union on those seeking federal offices" (Statement as to Jurisdiction, pp. 28-29). The District Judge referred to the *CIO* case, where this Court had described the indictment as charging the union with expenditures for "expressing views on candidates" (335 U.S. at p. 123), and stated that the "violations charged" in the *CIO* case were "the same charges as here" (Statement as to Jurisdiction, p. 28). Indeed, when the Government states that "the District Court failed to note that the allegations of this indictment would cover the latter [flagrant electioneering] type of broadcast",¹ all they are saying is that the District Court interpreted the indictment as charging contents of the communication in question similar to the contents of the communication in the *CIO* case. Whether the Government's interpretation of the indictment might have been accepted by the District Judge is immaterial here; it was not proposed to the District Judge and he interpreted the indictment as did appellee.

In summary, what happened here is that, in drafting the indictment and in its argument to the District Judge, the Government was relying for its distinction of the *CIO* case upon the difference between a payment by a union to inform its membership of its position through a union newspaper and a payment by a union to inform its membership and the public of its position through a commercial television channel. Now, the District Court having rejected this distinction and having followed the *CIO* case, the

¹ Brief in Opposition to Appellee's Motion to Affirm, p. 3.

Government has shifted away from its earlier distinction of the *CIO* case and is now urging that the indictment really charges appellee with some unspecified flagrant electioneering rather than seeking to inform its members and the public of its position on Congressional candidates. This shift, already stated, comes too late.

We respectfully urge the Court to grant appellee's Motion to affirm. An affirmance by this Court would do no more than apply the *CIO* case to a situation which Judge Augustus Hand, in the *Painters Local* case, described as "impossible, on principle, to differentiate" from the *CIO* case. An affirmance under the Criminal Appeals Act predicated upon the District Court's interpretation of the indictment would be no bar to any future indictment if the Government should ever discover the case it now conjures up of a union doing more than informing its members and the public of its position on candidates. Apparently the Government has been unable to locate such a case in the seven years since the *Painters Local* decision.

It is respectfully submitted that the Motion to Affirm should be granted.

Since the Court took no action on April 9, 1956 on the Government's Motion to Advance, it is assumed that the Motion to Advance is now moot.

Respectfully submitted,

HAROLD A. CRANEFIELD,
8000 East Jefferson Avenue,
Detroit 14, Michigan.

JOSEPH L. RAUH, JR.,
1631 K Street, N. W.,
Washington 6, D. C.,
Attorneys for Appellee.

APRIL, 1956.

(8450-9)

**BRIEF FOR THE
UNITED STATES**

INDEX

	Page
Opinion below.....	1
Jurisdiction.....	1
Question presented.....	2
Statute involved.....	2
Statement.....	3
Summary of argument.....	5
Argument.....	13
I. The district court erred in dismissing, for failure to state an offense under 18 U. S. C. 610, an indictment charging union expenditures for broadcasts intended to influence the public to support particular candidates in a federal election.....	15
A. The decision below is necessarily a holding that the "expenditure" provision does not apply to any union-financed broadcast.....	15
B. The "expenditure" provision, in its narrowest possible construction, reaches some broadcasts by unions on behalf of particular candidates in federal elections.....	16
1. Section 610 cannot be read to exclude from its purview all expenditures made from union treasuries for all political broadcasts.....	16
2. The legislative history of 18 U. S. C. 610 shows that it was intended to reach at least those expenditures which are equivalent to an indirect contribution to the campaign of a particular candidate.....	24

Argument—Continued

	Page
a. Legislative history prior to the 1947 Act.....	24
b. The Labor Management Relations Act of 1947....	30
II. Section 610, if construed to prohibit use of general union funds for political electioneering broadcasts on behalf of particular candidates, is not unconstitutional under the First Amendment....	36
A. The history of union political activities in the last nine years shows that the statute has preserved a reasonable balance between the expression of bloc sentiment and the protection of individual union members.....	37
1. The power of union majorities to express their collective political sentiments has been preserved through the development of voluntarily supported political committees.....	39
2. Under the statute as construed in <i>United States v. C. I. O.</i> , 335 U. S. 106, there is ample opportunity for the union as an entity to express its collective views on political problems.....	48
B. The statute is designed to achieve legitimate and important legislative objectives.....	51
1. "Undue influence" and "purity of elections".....	52
2. "Minority protection".....	57
C. The statute is an appropriate exercise of the Congressional power to regulate the conduct of federal elections.....	63
Conclusion.....	67

CITATIONS

Cases:

<i>Alabama State Federation of Labor v. McAdory</i> , 325 U. S. 450.....	37
--	----

Cases—Continued

	Page
<i>Amalgamated Society of Railway Servants v. Osborne</i> (1910), A. C. 87.....	58, 62, 66
<i>Andres v. United States</i> , 333 U. S. 740.....	20
<i>Associated Press v. United States</i> , 326 U. S. 1.....	62
<i>Board of Education v. Barnette</i> , 319 U. S. 624.....	59
<i>Borden's Farm Products Co., Inc. v. Baldwin</i> , 293 U. S. 194.....	37
<i>Brown v. Board of Education</i> , 347 U. S. 483.....	37
<i>Burroughs and Cannon v. United States</i> , 290 U. S. 534.....	37, 56
<i>Chastleton Corp. v. Sinclair</i> , 264 U. S. 543.....	37
<i>Curtis, Ex parte</i> , 106 U. S. 371.....	64
<i>DeMille v. American Federation of Radio Artists</i> , 31 Cal. 2d 137, 187 Pac. 2d 769, certiorari denied, 333 U. S. 876.....	53, 57, 58
<i>Graham v. Brotherhood of Locomotive Firemen</i> , 338 U. S. 232.....	58
<i>Ironworkers Case</i> , 61 Commonwealth Arbitration Re- ports 726.....	62
<i>Joint Anti-Fascist Committee v. McGrath</i> , 341 U. S. 123.....	65
<i>N. L. R. B. v. Jones & Laughlin Steel Corp.</i> , 301 U. S. 1.....	57
<i>Newberry v. United States</i> , 256 U. S. 232.....	24
<i>Peters v. Hobby</i> , 349 U. S. 331.....	9, 14
<i>Railroad Trainmen v. Howard</i> , 343 U. S. 768.....	59
<i>Railway Employees' Dept. v. Hanson</i> , 351 U. S. 225.....	59, 60
<i>Rescue Army v. Municipal Court</i> , 331 U. S. 549.....	9, 14
<i>Smiley v. Holm</i> , 285 U. S. 355.....	37
<i>Steele v. Louisville & Nashville Railroad Co.</i> , 323 U. S. 192.....	58, 60
<i>Syres v. Oil Workers</i> , 350 U. S. 892.....	59
<i>Terry v. Adams</i> , 345 U. S. 461.....	60, 65
<i>Tunstall v. Brotherhood of Locomotive Firemen</i> , 323 U. S. 210.....	58
<i>United Public Workers v. Mitchell</i> , 330 U. S. 75.....	64
<i>United States v. Borden Co.</i> , 308 U. S. 188.....	9, 14
<i>United States v. Bramblett</i> , 348 U. S. 503.....	21
<i>United States v. C. I. O.</i> , 335 U. S. 106.....	5, 7, 8, 10, 17-18, 19, 22, 23, 24, 25, 31, 38, 51, 52, 57, 63
<i>United States v. Classic</i> , 313 U. S. 299.....	25, 37
<i>United States v. Construction and General Lab. L. U.</i> , 101 F. Supp. 869.....	20

Cases—Continued

	Page
<i>United States v. Gradwell</i> , 243 U. S. 476.....	37
<i>United States v. Green</i> , 350 U. S. 415.....	19
<i>United States v. Harriss</i> , 347 U. S. 612.....	13,
21, 22, 23, 37, 54, 55, 65	65
<i>United States v. Morton Salt Co.</i> , 338 U. S. 632.....	65
<i>United States v. Painters Local Union</i> , 172 F. 2d 854..	19-20
<i>United States v. Petrillo</i> , 332 U. S. 1.....	9, 14, 23
<i>United States v. Rumely</i> , 345 U. S. 41.....	21, 22
<i>United States v. Sullivan</i> , 332 U. S. 689.....	21
<i>United States v. United States Brewers' Assn.</i> , 239 Fed.	
163	37, 55
<i>United States v. White</i> , 322 U. S. 694.....	65
<i>United States v. Wurzbach</i> , 280 U. S. 396.....	64
<i>West Virginia State Board of Education v. Barnette</i> ,	
319 U. S. 624.....	62
<i>Yarbrough, Ex parte</i> , 110 U. S. 651.....	37
Constitution and Statutes:	
U. S. Constitution, Art. 1, Sec. 4.....	37
Act of January 26, 1907, c. 420, 34 Stat. 864.....	24
Federal Corrupt Practices Act, 43 Stat. 1070:	
Section 302 (d).....	25
Section 313.....	24
Labor Management Relations Act of 1947, 61 Stat.	
136, Section 304.....	10, 24, 30, 52
2 U. S. C. 242.....	56
2 U. S. C. 244.....	56
2 U. S. C. 245.....	56
2 U. S. C. 246.....	56
2 U. S. C. 248.....	56
18 U. S. C. 608.....	56
18 U. S. C. 609.....	56
18 U. S. C. 610.....	2, 5, 11, 12, 13, 16-17
War Labor Disputes Act, Sec. 9, 57 Stat. 167-168..	25, 39, 52
Miscellaneous:	
AFL-CIO News, Vol. I, No. 1, p. 1, Dec. 10, 1955....	46
AFL-CIO News, Vol. I, No. 2, p. 1, Dec. 17, 1955....	53
AFL-CIO News, Vol. I, No. 13, p. 2, Mar. 3, 1956....	47
AFL-CIO News, Vol. I, No. 17, Mar. 31, 1956, pp. 1,	
16.....	40, 47
AFL-CIO News, Vol. I, No. 19, p. 5, April 14, 1956..	64

Miscellaneous—Continued

	Page
Chang, <i>Labor Political Action and the Taft-Hartley Act</i> , 33 Neb. L. R. 554.....	39, 60, 63
93 Cong. Rec. 6439.....	31, 32, 52
93 Cong. Rec. 6440.....	32, 52
93 Cong. Rec. 6447.....	35
Daugherty and Parrish, <i>The Labor Problems of American Society</i> , p. 412.....	39
Foenander, <i>Trade Union Rules and the Political Levy—Australia</i> , Vol. X, No. 1 (1953), Univ. of Toronto L. J., pp. 73-82.....	62
Gamser, <i>After Merger—AFL-CIO's Program and Problems</i> , Vol. 7, No. 2, Labor Law Journal, pp. 73, 76.....	46, 47
H. Rep. 2093, 78th Cong., 2d Sess.....	26
H. Rep. No. 2739, 79th Cong., 2d Sess., pp. 39-40....	27
Hudson and Rosen, <i>Union Political Action</i> , 7 Industrial and Labor Relations Rev., pp. 404, 407-408....	53
Keenan, <i>The AFL-LLPE and How It Works</i> , The House of Labor.....	40, 42, 45, 49, 50, 53
Kroll, <i>The CIO-PAC and How It Works</i> , The House of Labor.....	40, 45, 53
<i>Political Memo from Cope</i> , No. 2-56, p. 1.....	47
<i>Political Memo from Cope</i> , No. 4-56, p. 1.....	48, 53
S. Rep. No. 101, 79th Cong., 1st Sess.....	25, 26
S. Rep. No. 1, Part 2, 80th Cong., 1st Sess.....	29
Tanenhaus, <i>Organized Labor's Political Spending: The Law and Its Consequences</i> , 16 Journal of Politics, pp. 441, 462, 470.....	20, 39, 46, 48, 60, 66
Wartenberg, <i>Political Action in a Congressional District</i> , The House of Labor (Hardman and Neufeld, ed.), pp. 126-133.....	45
<i>What is Cope</i> (Pamphlet of the AFL-CIO Committee on Political Education).....	47, 48

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 44

UNITED STATES OF AMERICA, APPELLANT

v.

**INTERNATIONAL UNION UNITED AUTOMOBILE, AIRCRAFT
AND AGRICULTURAL IMPLEMENT WORKERS OF
AMERICA (UAW-CIO)**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN**

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the district court (R. 36-44) is reported at 138 F. Supp. 53.

JURISDICTION

On February 8, 1956, the District Court for the Eastern District of Michigan entered an order dismissing the indictment on the ground that it did not charge offenses under 18 U. S. C. 610 (R. 45-46). On February 20, 1956, a notice of appeal to this Court was filed in the district court (R. 46-47), and on April 23, 1956, this Court entered an order noting probable jurisdiction (R. 47). 351 U. S. 904. The

jurisdiction of this Court to review on direct appeal an order dismissing an indictment before trial, based on a construction of the statute on which the indictment is founded, is conferred by 18 U. S. C. 3731.

QUESTION PRESENTED

Whether an offense under 18 U. S. C. 610 is charged by an indictment alleging, *inter alia*, that on a specified date the defendant labor union made an expenditure of a specified sum from its general treasury fund to defray the expenses of a particular political television broadcast over a commercial television station, and that the broadcast was intended to influence the electorate generally to support the election of certain candidates for federal offices.

STATUTE INVOLVED

18 U. S. C. 610 provides:

It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing

offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than \$5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, * * * in violation of this section, shall be fined not more than \$1,000 or imprisonment not more than one year, or both; and if the violation was willful, shall be fined not more than \$10,000 or imprisoned not more than two years, or both.

For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

STATEMENT

On July 20, 1955, in the United States District Court for the Eastern District of Michigan, a four-count indictment was returned (R. 2-6) charging appellee, a labor organization, with four violations of 18 U. S. C. 610 by knowingly making expenditures from its general treasury funds in connection with a primary election held within the State of Michigan in 1954 to select candidates for Representatives in the

Congress of the United States (Count 1; R. 2-3) and in connection with a general election of a United States Senator and a Representative in Congress (Counts 2-4; R. 3-6).

Each count alleged the payment of a specified sum of money (ranging from \$700 to \$2,500) to a named company to defray the expenses of a political television broadcast, "urging and endorsing" the selection of particular candidates, over a named commercial television station in which the appellee union had no interest. It was alleged that the telecasts included expressions of political advocacy and were intended by appellee to influence the electorate generally, including voters who were not members of the appellee union, and to affect the results of the election. It was further alleged that the money expended was taken out of the general fund of the appellee and not from any other source, that this general fund consisted of union dues paid by members of the local unions belonging to and affiliated with appellee,¹ and that the expenditure was not made from voluntary political contributions or from subscriptions by appellee's members.

After entering a plea of not guilty to each count (R. 15), the appellee moved to dismiss the indictment on the grounds (1) that 18 U. S. C. 610 does not "prohibit payments by labor organizations to defray the expense of preparation for and telecasting of political television broadcasts urging and endorsing the selection and election of candidates for United States Senator and Representatives in the Congress of the

¹ Appellee is an international organization comprised of various union locals.

United States" (R. 18) and (2) that the provisions of 18 U. S. C. 610 "on their face and as construed and applied" are unconstitutional on various grounds (R. 18-19). The district court (per Picard, J.) after argument dismissed the indictment on February 8, 1956 (R. 45-46), having previously filed a memorandum opinion (R. 40-44) holding that "the 'expenditures' charged in this indictment are not expenditures prohibited by the Act" (R. 44). In its opinion, the court makes no attempt to construe affirmatively the disputed statutory terms, but instead relies on the principle of avoiding constitutional problems in construing a statute and on the application of that principle in *United States v. C. I. O.*, 335 U. S. 106.

SUMMARY OF ARGUMENT

I

A. 18 U. S. C. 610 prohibits unions and corporations from making "a contribution or expenditure in connection with" federal elections (including primaries). The district court dismissed, for failure to state an offense under 18 U. S. C. 610, an indictment which charges the expenditure of substantial sums of money out of general union funds to pay the expenses of certain television broadcasts intended to influence the public at large to support particular candidates in a federal election. By dismissing the indictment without consideration of the facts of this particular case, the district court's decision makes any distinctions between particular types of political broadcasting irrelevant. Since there is nothing on the

face of this indictment which describes the character of the broadcast, apart from the allegation that it urged and endorsed particular candidates and was intended to influence the electorate generally, and since the court's holding is not otherwise limited to any particular factual situation, its necessary implication is that *no* broadcast financed by a union on behalf of particular candidates can ever fall within the "expenditure" prohibition of the statute, regardless of the kind of electioneering involved.

B. The decision below is not supported by the language, purpose, or legislative history of the statute. Instead, the court relied principally on the interpretative canon that a court will endeavor to construe a statute to avoid serious doubts as to constitutionality. The decision, however, is not a construction of the statute at all in the sense of narrowing its application to any specified circumstances within the range of Congressional intent or limiting the holding to a particular factual situation alleged in the indictment. On the theory that any application of this indictment to any conceivable facts would involve a "speech" problem and thus present a constitutional issue, the court has left the term "expenditure" devoid of meaning, since all media of public communication for political campaigning involve some form of speech. Surely the principle of avoiding constitutional issues cannot be applied so broadly as to eliminate in practical effect a provision which, as we shall show, Congress deliberately inserted into the statute to cover at least some types of political expenditures.

The statute, as already noted, makes it unlawful for any labor organization (or corporation) to make an "expenditure in connection with any [federal] election." Obviously a political broadcast paid for out of general union funds, urging the general public to support particular candidates in a forthcoming federal election, comes within this literal language. In view of the crucial role of television in modern elections, such a broadcast is in every sense an indirect—and almost a direct—contribution to the political campaign of the candidates involved. At the very least, the "expenditure" provision must apply to union expenditures for outright electioneering to the general public via television, and such an act would be provable under this indictment.

This Court's opinion in *United States v. C. I. O.*, 335 U. S. 106, upon which the district court placed heavy reliance, does not support its position. In *C. I. O.*, the Court carefully limited its holding to the kind of expenditures charged by the indictment in that case—union expenditures for regular union newspapers distributed in regular course to union members. In doing so, the Court distinguished between statements of position addressed primarily to the union's own members through regular union channels, on the one hand, and active electioneering addressed to the public at large, on the other. The Court did not hold that no union expense involving a publication could be an "expenditure" under the statute; it expressly declined to do so. By contrast, the indictment in the instant case could reach situations which this Court in its *C. I. O.* opinion said

it was not reaching, *i. e.*, special electioneering activities.

The legislative history of Section 610 clearly shows that Congress intended the "expenditure" provision to cover union or corporate expenditures which are in the nature of indirect contributions to candidates in federal elections, *i. e.*, expenses which, though not tendered directly to the candidate, are expended for the special purpose of electioneering in his behalf. See *United States v. C. I. O.*, 335 U. S. 106, 115. And the Congressional debates preceding passage of this legislation demonstrate that the "expenditure" provision would cover such an indirect contribution as the purchase of radio time from general union funds for this purpose.

The district court erred, therefore, in dismissing the indictment without reference to any evidence which might be adduced on the trial of this case. Admittedly, under this law as under most laws of general application, there may be marginal instances where a line must be drawn between permissible and illegal political broadcasting with union moneys. But the possible existence of borderline cases does not render an indictment invalid where the general class of activities to which the statute is directed is plainly within the terms of the indictment. The kind of union electioneering which could be covered by this indictment comes within the general class of activities which Congress intended to forbid as indirect contributions to the campaign of a particular candidate in a particular election.

II

Although the district court did not pass on the constitutionality of the statute if applied to prohibit use of general union funds for political electioneering broadcasts on behalf of particular candidates, we believe it incumbent upon us to state the Government's position on this issue. We certainly do not presume to suggest, however, that the issue must necessarily be reached on this appeal. This Court has repeatedly emphasized that it will not decide constitutional questions unless necessary to a decision (*e. g.*, *Peters v. Hobby*, 349 U. S. 331), that it will not decide constitutional questions in the abstract (*e. g.*, *Rescue Army v. Municipal Court*, 331 U. S. 549), and that an appeal under the Criminal Appeals Act does not open up the whole case (*e. g.*, *United States v. Borden Co.*, 308 U. S. 188, 193). Applying these principles to the instant case, the Court—if it finds that the indictment does state an offense under 18 U. S. C. 610—may deem it appropriate to remand the case to the district court for trial without passing on the constitutional question at this stage in the proceedings. See *United States v. Petrillo*, 332 U. S. 1, 10-12.

A. Should it be reached, however, any meaningful resolution of the issue involves a survey of the history of the political activities of unions in the nine years since the passage of the Taft-Hartley Act in 1947, which first imposed the prohibition on union "expenditures." This history, we submit, refutes the objection that the "expenditure" provision is a "complete prohibition" of the right of union majorities "to

make expenditures for directly and openly publicizing their political views and information supporting them"—the premise of the concurring opinion of Mr. Justice Rutledge in the *C. I. O.* case (335 U. S. at 145).

After enactment in 1947 of Section 304 of the Taft-Hartley Act—the predecessor of 18 U. S. C. 610—American labor unions intensified an already existing movement to develop political committees to represent labor in politics. These committees were organized to parallel all levels of union activity and each worked in close conjunction with its operative union organization. Since they were financed by voluntary contributions, they were not limited by 18 U. S. C. 610 in their political activities as to the "contributions" and "expenditures" they could make. With a not inconsiderable treasury of their own, they became a highly vocal representative of organized labor in every election since 1948. In December, 1955, following the merger of the largest part of American labor into the AFL-CIO, a vast new political organization known as the Committee on Political Education was created to operate as the political arm of the new fifteen-million-member group.

These voluntary political committees, moreover, are not the full measure of permissible union political activities. Following this Court's *C. I. O.* decision, which construed the "expenditure" provision as not covering expenditures for regular union publications containing political material distributed in normal course to the union membership, the unions made wide use of such union-financed publications to in-

struct individual unionists as to the union's official political views and endorsement. Other media have similarly been used for such "educational" purposes. The net effect of 18 U. S. C. 610 has been to prohibit only active electioneering to the public by unions with general funds on behalf of particular candidates.

B. In enacting what is now 18 U. S. C. 610, Congress was undoubtedly concerned with the danger to the elective process implicit in allowing labor unions to use compulsory levies for the purpose of financing political activities on behalf of their total membership, part of which might not subscribe to the political orthodoxy of the organization on all matters. For similar reasons, the prohibition was made applicable to corporations as well. Even if there were any real assurance that political representatives of union or corporate entities would accurately interpret a "majority" viewpoint to the public as to every political issue, the necessary individualism of the electoral process is eliminated unless, as under the present system, each participant is solicited on a voluntary basis and may withdraw his support when his own views do not coincide with the organization's position.

Under the forced-levy system, moreover, the political rights of union minorities are not protected, and they are in effect made, often under fear of loss of employment, to support through use of their funds political causes with which they cannot agree. The question is not simply whether majority rule should control union political action. Clear-cut choices are not in practice submitted to union memberships to be accepted or rejected. If unions were allowed to use

treasury funds for electioneering purposes, it is highly doubtful that the individual union member would be given any significant choice in its ultimate disposition.

While concededly a union as an entity has a legitimate interest in political affairs and a right to present its views, 18 U. S. C. 610, as construed by this Court in the *C. I. O.* case, allows it ample latitude to do so. It may communicate its viewpoint to its membership through regular union channels and in that way interpret for them the relationship between legitimate union interests and political campaigns. And union majorities may always speak effectively and accurately through voluntary political committees.

The danger of the political levy has been recognized by Great Britain, New South Wales, and Western Australia, which protect the rights of union minorities by legislation allowing dissidents the opportunity to withdraw from union-financed political activities. The present system in this country achieves the same effect, and in addition makes the voluntary political committees directly responsive to the will of the individual contributor whose continuing agreement represented by his continuing support must at all times be respected.

Moreover, even assuming *arguendo* that the official labor position on any given issue does reflect the will of the majority, the First Amendment does not entitle the majority to the financial support of the minority in putting across its political position to the public. It would be the very antithesis of the purpose of the First Amendment to hold that minorities *must* aid the propagation of the majority's views. The present

system, which preserves the ability of union majorities to take political action on a voluntary basis and the ability of the entity to make its official political position known to its membership, maintains a reasonable balance between the rights of the individual and of the group.

C. In the light of these considerations, 18 U. S. C. 610 is not an invalid restraint on group political expression within the condemnation of the First Amendment. Even the political activities of individuals have to some extent been limited in connection with elections and other governmental processes. *E. g.*, *United States v. Harriss*, 347 U. S. 612. Certainly unions and corporations enjoy no First Amendment status superior to the rights of individuals who compose the group. Congress is not so impotent under the Constitution that it cannot place reasonable limitations on the power of such artificial entities to substitute money for the expression of popular will in federal elections.

ARGUMENT

The question presented by this appeal is whether the district court erred in dismissing the indictment for failure to charge an offense under 18 U. S. C. 610, *supra*, pp. 2-3. More specifically, because of the nature of the allegations of the indictment, the question presented is whether the "expenditure" provision of the statute applies to *any* political broadcast paid for by a union out of its general funds.

We shall undertake first to show that the "expenditure" provision does apply to a union's use of

its general funds at least for some types of political broadcasts in connection with a federal election. Then, since the decision below is apparently based in large part on the court's reluctance to pass on the constitutionality of Section 610 if applied to any expenditure of union funds for any political broadcasting to the general public, the Government's position on this constitutional question is stated in detail.

We do not presume to suggest, however, that the constitutional question must necessarily be reached on this appeal. This Court has repeatedly emphasized that it will not decide constitutional questions unless necessary to a decision (*e. g.*, *Peters v. Hobby*, 349 U. S. 331), that it will not decide constitutional questions in the abstract (*e. g.*, *Rescue Army v. Municipal Court*, 331 U. S. 549), and that an appeal under the Criminal Appeals Act does not open up the whole case (*e. g.*, *United States v. Borden Co.*, 308 U. S. 188, 193). Applying these principles to the instant case, the Court—if it finds that the indictment does state an offense under 18 U. S. C. 610—may deem it appropriate to remand the case to the district court for trial without passing on the constitutional question at this stage of the proceedings. Compare *United States v. Petrillo*, 332 U. S. 1, 10-12. In the event of such a remand, an acquittal based on the proof presented would of course render the constitutional question moot for the purposes of this case, while a conviction would provide a concrete record for adjudication of the constitutional question and would in no way prejudice the appellee from again raising the issue.

I

THE DISTRICT COURT ERRED IN DISMISSING, FOR FAILURE TO STATE AN OFFENSE UNDER 18 U. S. C. 610, AN INDICTMENT CHARGING UNION EXPENDITURES FOR BROADCASTS INTENDED TO INFLUENCE THE PUBLIC TO SUPPORT PARTICULAR CANDIDATES IN A FEDERAL ELECTION

A. THE DECISION BELOW IS NECESSARILY A HOLDING THAT THE "EXPENDITURE" PROVISION DOES NOT APPLY TO ANY UNION-FINANCED BROADCAST

The district court has dismissed, for failure to state an offense under the statute, an indictment which charges the expenditure of substantial sums of money out of general union funds to pay the expense of commercial television broadcasts intended to influence the public at large to support the election of particular candidates in a federal election. Because of the general nature of these allegations, the court's decision necessarily implies a holding that the "expenditure" provision of 18 U. S. C. 610 does not apply to *any* broadcast paid for by a union out of its general funds, no matter what the amount expended or the kind of political advocacy involved or the role of the union's broadcasts in the candidate's campaign.

It would be entirely consistent with the allegations of this indictment to prove that the broadcasts were out-and-out electioneering speeches on behalf of the candidates involved. It would even be consistent with the allegations of this indictment if the proof showed that the union paid for a series of broadcasts which consisted only of the constant repetition of a slogan, such as "Vote for Mr. X, the union's friend." This would be, in the terms of the indictment, a broadcast "urging and endorsing" the election of a particular

candidate. But it would also be the use of general union funds for the active support of the political campaign of a particular candidate.

In its motion to affirm (p. 11), the appellee endeavors to interpret the decision below less broadly by pointing to the statement in the court's opinion that the purpose of appellee's expenditures was "to inform its members and others of the position of the Union on those seeking certain federal offices." This statement, however, does nothing to narrow the effect of the decision. Any political broadcast under the auspices of a union does, in the words of the district court, state the position of the union. Even spot announcements of the sort already suggested—"Vote for Mr. X, the union's friend"—perform that function. When, therefore, the court below dismissed the indictment without waiting for the specific nature of the broadcasts to be developed at the trial, the court necessarily did hold that *no* political broadcast by a union can fall within the "expenditure" provision of the statute. We can conceive of no union broadcast, no matter how aggressive or "political" the electioneering on behalf of particular candidates, which would not be within the scope of the court's ruling.

B, THE "EXPENDITURE" PROVISION, IN ITS NARROWEST POSSIBLE CONSTRUCTION, REACHES SOME BROADCASTS BY UNIONS ON BEHALF OF PARTICULAR CANDIDATES IN FEDERAL ELECTIONS

1. *Section 610 cannot be read to exclude from its purview all expenditures made from union treasuries for all political broadcasts*

18 U. S. C. 610, insofar as pertinent to the issues in this case, provides as follows:

It is unlawful * * * for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential or Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for * * *. [Emphasis added.]

Although the "expenditure" provision also governs corporations, its application to labor unions is principally in issue here.

There can be no doubt that the use of general union funds to finance a political broadcast, urging the public at large to support particular candidates in a forthcoming federal election, is squarely within the literal language of the statute. It is also within the prime purpose of the "expenditure" provision—that is, to eliminate any question as to the applicability of the "contribution" provision where the subsidy is not paid directly to the candidate but is used to campaign in his behalf. *United States v. C. I. O.*, 335 U. S. 106, 115, 122; see *infra*, pp. 24-36. In view of the great significance of television and radio broadcasts in present-day campaigns, it is readily apparent that paying for a political broadcast on behalf of a particular candidate is a valuable subsidy which rebounds directly to his benefit. Such practice differs but little from a direct contribution; the distinction lies only in the fact that in one instance the candidate would apply contributed funds to purchase television time, and in the other the union would buy it for him. It is a difference of form rather than substance. At the very least, the term

"expenditure," to have any meaning at all, must apply to such broadcasts. And since the indictment here would plainly permit proof of such active direct electioneering, the court below was in error in dismissing the indictment for failure to charge an offense under the statute.

The *C. I. O.* case does not lend any support to a contrary conclusion. Although the Court there held that the "expenditure" provision was not intended to apply to political advocacy in a regular union newspaper distributed to union members, it specifically pointed out (335 U. S. at 111):

We do not read the indictment as charging an expenditure by the CIO in circulating free copies to nonsubscribers, nonpurchasers or among citizens not entitled to receive copies of "The CIO News," as members of the union.²

And further (335 U. S. at 122-123):

It is one thing to say that trade or labor union periodicals published regularly for members, stockholders or purchasers are allowable under § 313 and quite another to say that in connection with an election occasional pamphlets or dodgers or free copies widely scattered are forbidden.

The distinction was thus drawn between statements of position addressed primarily to the union's own members through a regular union organ of communication, on the one hand, and active electioneering

² The court held that the allegation that 1,000 extra copies had been run off "charges nothing more" than that the extra copies "were distributed in regular course to members or purchasers" (335 U. S. at 111-112).

addressed to the public at large, on the other. Stated otherwise, the distinction is between a union's use of the normal avenues for expression of the organization's policies to its own members and the special use of general funds, contributed by all members, in support of the political campaign of a particular candidate.

From the face of this indictment, there are no facts which would bring this case within the narrow holding of the *C. I. O.* case that expressions of political advocacy in a regularly published union newspaper are not within the scope of the "expenditure" provision. The indictment could just as well apply to a broadcast analogous to the type of expenditure which in *C. I. O.* this Court stated it was not passing upon—*i. e.*, special electioneering activities. The court below failed to note that the specific facts on which the *C. I. O.* decision rested appeared from the face of the indictment in that case. That decision cannot be automatically applied to this indictment where no equivalent specific facts are alleged. The indictment, as written, must be tested against the statute to see whether, as written, it charges a crime. *United States v. Green*, 350 U. S. 415, 418, 421.

The court below also relied on *United States v. Painters Local Union*, 172 F. 2d 854 (C. A. 2), which involved a political broadcast over a commercial radio station and a political advertisement in a daily newspaper of general circulation. However, the facts developed on the trial, which the Second Circuit deemed controlling, were that the expenditures for the advertisement and broadcast were expressly authorized at

a special membership meeting; that the amounts involved were very small (i. e., \$111.14 for the newspaper space and \$32.50 for the radio time); and that, as the court observed, "this small union owned no newspaper and a publication in the daily press or by radio was as natural a way of communicating its views to its members as by a newspaper of its own" (172 F. 2d at 856). In short, the Court of Appeals found that the particular union-financed activities shown on the trial were comparable to the intraunion "house organ" involved in the *C. I. O.* case, rather than an attempt to reach the public by political campaigning. While we cannot subscribe to this reasoning, nor with the apparent application of a *de minimis* rule in the enforcement of Section 610,³ we also cannot perceive the applicability of that case to this one. Here the defendant is a large international union organization, and the indictment alleges that substantial amounts were expended for each broadcast for the purpose of influencing the general public.⁴ Whatever may be the

³ See Tanenhaus, *Organized Labor's Political Spending: The Law and Its Consequences*, 16 Jour. of Pol. 441, 459-461.

⁴ The opinion below makes note of the fact that no petition for a writ of certiorari was filed in the *Painters Local* case to seek review of the Second Circuit's opinion. In addition to the fact that such nonaction by the Government has no legal significance (*Andres v. United States*, 333 U. S. 740, 756, concurring op. of Mr. Justice Frankfurter), no direct conflict was presented by the narrow holding in that case.

The other decision relied upon by the court below, *United States v. Construction and General Lab. L. U.*, 101 F. Supp. 869 (W. D. Mo.), also turned on its special facts. In that case, the court apparently believed that the amounts involved were too small to be either a contribution or expenditure. Since there was a directed verdict of acquittal, the Government could not appeal.

limitations of the term "expenditure," we think it is clear that it must cover some types of broadcasts of the kind alleged in this indictment—i. e., political broadcasts over a commercial station paid for out of general funds and designed to influence the public at large to vote for a particular candidate in a particular election.

Shorn of any case support, the conclusion of the court below is also unsupported by any other relevant criterion of statutory interpretation. In addition to its error in attempting to extend the already "strained" decision in the *C. I. O.* case (*United States v. Rumely*, 345 U. S. 41, 47) to cover the far broader allegations of this indictment, the decision falls into the even more fundamental error of ignoring evidence of Congressional intent. The court placed heavy emphasis on the interpretative canon that a court will endeavor to construe a statute to avoid serious doubts as to constitutionality. However, while such a canon has a real purpose where there is an ambiguity of language and Congressional intent is otherwise obscured (cf. *United States v. Harriss*, 347 U. S. 612; *United States v. Rumely*, 345 U. S. 41, 45-46), it is not a device whereby a judicial meaning may be freely substituted for the legislative. As this Court has said, "a restrictive interpretation should not be given a statute merely because * * * giving effect to the express language employed by Congress might require a court to face a constitutional question." *United States v. Sullivan*, 332 U. S. 689, 693. Cf. *United States v. Bramblett*, 348 U. S. 503, 509-510.

By purporting to narrow the construction of the disputed term to bring it within safe range of constitutional validity, the decision below actually results in a holding that *no* union-financed political broadcasts, regardless of character or surrounding circumstances, can ever be in violation of the section. Inferentially this holding would also seem to apply to union expenditures for all other media of communication to the general public. Nor does there appear to be any sound basis for distinguishing between expenditures by unions and expenditures by corporations. Thus, under the guise of construing the term "expenditure," the ruling below actually leaves it devoid of meaning. If the mere fact that speech or communication is involved justifies the elimination of a particular type of expenditure from coverage under the statute, then the term "expenditure" as used in Section 610 has no content because virtually no otherwise legal "expenditures" for political purposes will be unrelated to speech or communication. The decision below is not really a construction of the statute at all in the sense of narrowing its applicability to specified circumstances within the range of Congressional intent (compare *United States v. Harriss*, 347 U. S. 612, 621-624; *United States v. Rumely*, 345 U. S. 41, 47) or rejecting its applicability to a specific factual situation alleged in the indictment (*United States v. C. I. O.*, 335 U. S. 106). Surely the principle of avoiding constitutional issues cannot be applied so broadly as to eliminate in practical effect a provision which, as we show below, Congress deliberately inserted into the statute to cover

at least some types of political expenditures by unions and corporations.

Conversely, we do not urge that all expressions of political advocacy paid for out of union funds fall within the ban. This Court has already held in the *C. I. O.* case that the expense incurred in maintaining an intraunion "house organ" is not an "expenditure in connection with any election" under the statute. Other hypothetical cases might be cited where the expenditure of union moneys would fall outside the bar of 18 U. S. C. 610, as interpreted in *C. I. O.* Whether the financing of a particular broadcast is in fact an "expenditure" under the statute must be determined on the basis of the proof to be developed at a trial. Compare *United States v. Petrillo*, 332 U. S. 1, 11-12. That issue is not here now. The possibility of borderline cases does not justify a holding that no broadcast by a union is covered by the statute. Cf. *United States v. Harriss*, 347 U. S. 612, 618. It is sufficient to require a reversal of the judgment below that the term "expenditure" must, in the light of the language and purpose of the statute, cover some political broadcasts by a union paid for out of general funds in behalf of particular candidates in a federal election. The allegations of the present indictment are that the union expended general funds for the specific purpose of urging the general public to support particular candidates. Those allegations permit proof of the use of funds for the special purpose of actively electioneering on behalf of a particular candidate. Such conduct is an offense under the statute.

2. *The legislative history of 18 U. S. C. 610 shows that it was intended to reach at least those expenditures which are equivalent to an indirect contribution to the campaign of a particular candidate*

This Court, in its decision in *United States v. C. I. O.*, 335 U. S. 106, 115, noted that the "expenditure" provision was inserted in Section 304 of the Labor-Management Relations Act of 1947 (61 Stat. 159), from which the present statute stems, because the prior statute prohibiting contributions "could easily be circumvented through indirect contributions." We review, more briefly than did the Government's brief in the *C. I. O.* case (No. 695, O. T. 1947, pp. 13-55), the legislative history that clearly establishes this purpose.

a. *Legislative history prior to the 1947 Act*

The proscription of "contributions" for the purpose of influencing the outcome of federal elections was first enacted in the Act of January 26, 1907, c. 420, 34 Stat. 864, which made it unlawful for any corporation to make a money contribution in connection with a federal election. After it was held in *Newberry v. United States*, 256 U. S. 232, that the federal limitation upon expenditures by candidates was unconstitutional as applied to primaries, the Federal Corrupt Practices Act was enacted in 1925. 43 Stat. 1070. While primaries and conventions were expressly excluded from the scope of the legislation, the proscription against corporate contributions for political purposes (Section 313) was continued. However, the term "money contribution" was changed to

"contribution," which was defined in Section 302 (d) to include "a gift, subscription, loan, advance, or deposit, of money, or anything of value", as well as a promise or agreement to make a contribution whether enforceable or not.

In 1943, the proscription against the making of contributions in connection with federal elections^{*} was extended to labor organizations. The extension was a temporary one, being effected in Section 9 of the War Labor Disputes Act, which by its terms was to expire at the end of the war. 57 Stat. 167-168. As this Court found in the *C. I. O.* case, the legislative history of Section 9 indicated that it was enacted in response to a Congressional belief "that the influence which labor unions exercised over elections through monetary expenditures should be minimized, and that it was unfair to individual union members to permit the union leadership to make contributions from general union funds to a political party which the individual member might oppose." 335 U. S. at 115.

In 1945, the Special Senate Committee to Investigate Presidential, etc., Campaign Expenditures investigated the activities of the CIO Political Action Committee (CIO-PAC) in the 1944 election. Senate Report No. 101, 79th Cong., 1st Sess. Denying any violation of the Act, the CIO-PAC asserted that its direct contributions were limited to State and local

^{*} While the Supreme Court already had recognized, in *United States v. Classic*, 313 U. S. 299, the power of Congress to regulate primaries, and such Congressional authority already had been exercised in some provisions of the Hatch Act, this proscription was made applicable only to general elections.

elections and federal primaries and that its activities in federal elections were limited to political and educational activities through "expenditures" on behalf of a candidate as distinguished from "contributions." The Special Committee concluded that the CIO-PAC had not violated the Act since it was expressly inapplicable to primary elections and since the ban did not then extend to "expenditures." As a result of the hearings, it was recommended that the proscription be extended to primary campaigns and nominating conventions (p. 81). In addition, Senators Ball and Ferguson proposed that "expenditures," as well as "contributions," be included in the ban on the ground that the investigation showed a pattern for avoiding the limitation on "contributions" by aiding a favored party or candidate through "expenditures" (p. 83). A majority of the Committee rejected this proposal.

In 1945, the House Special Committee to Investigate Campaign Expenditures, 78th Cong., 2d Sess., issued a report (No. 2093) on its investigation of the extent and nature of contributions and expenditures in connection with the election of Representatives. The Committee found, *inter alia*, that the purposes of the Federal Corrupt Practices Act were being circumvented by such organizations as the CIO-PAC, particularly in respect to the use of levied funds to promote political activities during party primaries and prior to elections. Accordingly, the Committee recommended that the prohibition against contributions in connection with elections be extended to pri-

maries (p. 9). And, relative to extension of the prohibition to "expenditures," it was stated (p. 11):

It has been the contention of union groups that money expended by them for or against a political candidate or party and not given directly to candidates or political parties, is not a contribution as defined in the law but is an expenditure not restricted by law.

If such a distinction stands then national banks, corporations, and groups, as well as labor organizations, might avail themselves of this avenue to avoid the provisions of the existing law.

It is not the province of this committee to attempt to answer these questions here, but attention is directed to the facts developed by the hearings to which the proper legislative committees of the Congress should give such consideration as they deem proper.

In 1946, further investigation of campaign expenditures by the CIO-PAC, A. F. of L., and numerous political committees and organizations was conducted by the House Special Committee on Campaign Expenditures, 1946. See House Report No. 2739, 79th Cong., 2d Sess. On the basis of this investigation, the Committee concluded that the limitation on contributions by corporations and labor organizations was rendered ineffective because of the widespread "expenditures" made by these organizations in behalf of a favored candidate. The Committee stated (pp. 39-40):

The apparent purpose of the provisions of the act, limiting the amount of expenditures by candidates, appears to be defeated by the fact

that there is no limit to the amount that a political committee or other organization may expend in behalf of a candidate. While the candidates have, to the greater part, limited their expenditures to the maximum allowed under the terms of the act, there is widespread activity by organizations functioning for the purpose of aiding and assisting in the election of candidates, in securing contributions and making expenditures in behalf of candidates, which expenditures are not included within the limitations which the candidates themselves may expend.

There is evidence before the committee that some organizations which are prohibited from making contributions in a political campaign have made expenditures and have engaged in activities the purpose of which were to endeavor to influence the election or defeat of candidates.

It is noted that the act prohibits contributions and does not expressly prohibit expenditures. It is reported to the committee that a former Attorney General had issued a ruling to the effect that the activities above-mentioned do not constitute the making of contributions. It is conceivable that the word "contribution" might imply a giving on one hand and accepting on the other, yet from the study of the history of this provision of the act, the committee feels that the activities hereinabove referred to, which are carried on on an extensive scale, constitute violations of the spirit and intent of the act.

The intent and purpose of the provision of the act prohibiting any corporation or labor

organization making any contribution in connection with any election would be wholly defeated if it were assumed that the term "making any contribution" related only to the donating of money directly to a candidate, and excluded the vast expenditures of money in the activities herein shown to be engaged in extensively. Of what avail would a law be to prohibit the contributing direct to a candidate and yet permit the expenditure of large sums in his behalf?

The committee is firmly convinced, after a thorough study of the provisions of the act, the legislative history of the same, and the debates on the said provisions when it was pending before the House, that the act was intended to prohibit such expenditures.

The Committee also recommended that legislation be enacted making the restriction on contributions by labor organizations permanent and extending the restriction to include "expenditures" as well (pp. 45-46).

In 1946, the Special Committee to Investigate Senatorial Campaign Expenditures also considered these problems and subsequently recommended that primaries and conventions be covered and that "expenditures" as well as "contributions" be included in the ban (S. Report No. 1, Part 2, 80th Cong., 1st Sess., pp. 36-39). As to the extension of the restriction to include "expenditures," the Committee states (pp. 38-39):

Section 313 of the Federal Corrupt Practices Act of 1925 as amended applies only to "contributions." Experience has shown that some

corporations and labor unions have spent money directly on behalf of a political party or candidate and that the applicability of the prohibition upon contributions has in consequence been denied. A redefinition of the terms "contribution" and "expenditure" as recommended in 3 above, coupled with specific extension of the prohibition to include a prohibition upon "expenditures" will plug the existing loophole whereby corporations, national banks, and labor organizations are enabled to avoid the obviously intended restrictive policy of the statute by garbing their financial assistance in the form of an "expenditure" rather than a contribution.

Thus, prior to the enactment of the Labor Management Relations Act of 1947, committees of Congress had been concerned with the avoidance of the prohibition against "contributions" by "expenditures," i. e., activities which, although they had substantially the same effect as a contribution, were deemed not to be within the prohibition.

b. The Labor Management Relations Act of 1947

The concern of the various committees discussed above with the avoidance of the prohibition against contributions was reflected in Section 304 of the Labor Management Relations Act of 1947,* which amended Section 313 of the Federal Corrupt Practices Act to prohibit "expenditures" as well as "contributions" by corporations and labor unions. The new section also extended the prohibitions to primaries as well

* Act of June 23, 1947, c. 120, Title III, Section 304, 61 Stat. 159.

as general elections and made permanent the application of the section to labor unions.

The committee reports and debates preceding passage of Section 304 are set out in full in the Appendix to the brief of the Government in the *C. I. O.* case (No. 695, O. T. 1947). These materials make it abundantly clear that the purpose of inserting the "expenditure" provision was to prevent the by-passing of the prohibition against "contributions." For example, Senator Taft stated during floor debate (93 Cong. Rec. 6439):

* * * If "contribution" does not mean "expenditure," then a candidate for office could have his corporation friends publish an advertisement for him in the newspapers every day for a month before election. I do not think the law contemplated such a thing, but it was claimed that it did, at least when it applied to labor organizations. So, all we are doing here is plugging up the hole which developed, following the recommendation by our own Elections Committee, in the Ellender bill.

It is likewise clear that the Members of Congress, both proponents and opponents of the measure, considered that expenditures for radio broadcasts might well be the type of indirect contribution which the term "expenditure" was designed to reach. The issue was directly raised (93 Cong. Rec. 6439):

Mr. PEPPER. Does what the Senator has said in the past also apply to a radio speech? If a national labor union, for example, should believe that it was in the public interest to elect the Democratic party instead of the Republican

party, or vice versa, would it be forbidden by this proposed act to pay for any radio time, for anybody to make a speech that would express to the people the point of view of that organization?

Mr. TAFT. If it contributed its own funds to get somebody to make the speech, I would say they would violate the law.

Mr. PEPPER. If they paid for the radio time?

Mr. TAFT. If they are simply giving the time, I would say not; I would say that is in the course of their regular business.

Mr. PEPPER. What I mean is this: I was not assuming that the radio station was owned by the labor organization. Suppose that in the 1948 campaign, Mr. William Green, as president of the American Federation of Labor, should believe it to be in the interest of his membership to go on the radio and support one party or the other in the national election, and should use American Federation of Labor funds to pay for the radio time. Would that be an expenditure which is forbidden to a labor organization under the statute?

Mr. TAFT. Yes.

Various indirect forms of radio expenditures were also discussed (93 Cong. Rec. 6439-6440):

Mr. BARKLEY. Suppose a certain corporation, for instance, the corporation that makes Bayer aspirin, or Jergens lotion, or any other well-advertised product, employs a commentator to talk about various things, winding up with an advertisement of the product, and suppose that the radio commentator from day to day takes advantage of his employment or his sponsorship

to make comments which are calculated to influence the opinions of men or women as to political candidates. Would the corporation sponsoring the particular commentator be violating the law?

Mr. TAFT. I should have to know the exact facts. If, for instance, apart from commentators and the radio, and taking the case of a paid advertisement, suppose a corporation advertises its products, and that every day for 2 weeks before the election it advertises a candidate, I should say that would be a violation of the law. I would say the same thing probably would be true of a radio broadcast of that kind, under certain circumstances, but I think I should like to know the exact facts before expressing an opinion.

Mr. BARKLEY. In the case of a commentator who is paid to advertise a certain product, and who in the course of his 15 minutes on the radio may also seek to influence votes, the sponsor may say, either before or after the broadcast, that he is not responsible for what the commentary says; yet he is paying the commentator for his broadcast. Would that still be a violation of law, although the sponsor might excuse himself or attempt to excuse himself by saying he was not responsible for the opinions expressed by the commentator?

Mr. TAFT. I think there are all degrees. It would be for a court to decide. I think as a matter of fact, if that had happened under the old law, there would have been the same question.

I want to make the point that we are not raising any new questions here. Those same

questions could have been raised with respect to corporations during the past 25 years. It is a question of fact: Was the corporation using its money to influence a political election?

* * * * *

Mr. MAGNUSON. Let us consider the teamsters. Suppose they have a weekly radio program, as, indeed, they have had for a long time back. Or let us say the AFL has such a radio program. Let us assume I am running for office and they ask me to be a guest on their program. Suppose I talk on the subject of labor and do not advocate my own candidacy. Nevertheless I am on that program. My name is being advertised and I am being heard by many thousands of people. Would that be an unlawful contribution to my candidacy?

Mr. TAFT. If a labor organization is using the funds provided by its members through payment of union dues to put speakers on the radio for Mr. X against Mr. Y, that should be a violation of the law.

Mr. MAGNUSON. They are not paying me anything. They have asked me to be a guest.

Mr. TAFT. I understand, but they are paying for the time on the air. Of course, in each case there is a question of fact to be decided. I cannot answer various hypotheses without knowing all the circumstances. But in each case the question is whether or not a union or a corporation is making a contribution or expenditure of funds to elect A as against B. Labor unions are supposed to keep out of politics in the same way that corporations are supposed to keep out of politics.

The question again arose during the debates in this colloquy (93 Cong. Rec. 6447):

Mr. TAYLOR. * * * Take the matter of a radio program sponsored by either a union or a corporation. I think the AFL or the CIO, one or the other, has a news commentator who comments on the news. Could he comment on political candidates favorably or unfavorably?

Mr. TAFT. If the General Motors Corp. had a man speaking on the radio every week to advocate the election of a Republican or a Democratic Presidential candidate, the corporation ought to be punished, and it would be punished under the law. Labor organizations should be subject to the same rule.

Mr. TAYLOR. That is altogether different. It is a more subtle thing. When a commentator is broadcasting the news every day he can do a lot more good or harm to a man by coloring his broadcast and presenting it in the guise of a news commentary than he could openly.

Mr. TAFT. The Senator is right. It is a question of fact which would have to be raised in every case. Is it a contribution to a candidate or is it not? Possibly a knock is a boost sometimes. That argument might well be made by a person who was taking part in an election.

Thus, while it was recognized that there might be issues as to whether a particular broadcast fell within the prohibition of the statute, there can be no doubt that the law was meant, by its interdiction against "expenditures," to cover *some* forms of political broadcasting by unions. Whatever may have been the congressional intent with respect to peripheral

activities of the type involved in the *C. I. O.* case, the legislative history of Section 610 makes clear that at the very least the statute was designed to reach union expenditures relating to public broadcasting to influence the public at large to support particular union-endorsed candidates in federal elections. That being so, it must follow that the court below erred in dismissing the indictment for failure to state an offense under the statute.

II

SECTION 610, IF CONSTRUED TO PROHIBIT USE OF GENERAL UNION FUNDS FOR POLITICAL ELECTIONEERING BROADCASTS ON BEHALF OF PARTICULAR CANDIDATES, IS NOT UNCONSTITUTIONAL UNDER THE FIRST AMENDMENT

For the reasons already stated (*supra*, p. 14), if this Court agrees that the court below erred in its construction of the statute, the case might be properly remanded to the district court for trial without passing on the constitutionality of the statute at this stage in the proceeding. However, since the court below based its construction in large part on the principle of avoiding constitutional issues, we believe that it is incumbent upon us to show that the statute, if construed in accordance with the clear Congressional purpose to prohibit the use of general union funds for political electioneering broadcasts in favor of particular candidates, is not invalid under the First Amendment.

Today there can be no doubt of the power in Congress to preserve the purity of federal elections and for that purpose to enact laws regulating the conduct

of federal elections. Such power stems from Article 1, Section 4, of the Constitution, and its exercise has been sustained by this Court in a variety of circumstances. See *United States v. Harriss*, 347 U. S. 612, 625; *United States v. Classic*, 313 U. S. 299, 320; *Smiley v. Holm*, 285 U. S. 355, 366; *Burroughs and Cannon v. United States*, 290 U. S. 534, 544-545; *United States v. Gradwell*, 243 U. S. 476, 482; *Ex parte Yarbrough*, 110 U. S. 651, 666-667. See also *United States v. United States Brewers' Assn.*, 239 Fed. 163 (W. D. Pa.). The question here, therefore, is the validity of the particular means of regulation chosen by Congress in enacting Section 610.

A. THE HISTORY OF UNION POLITICAL ACTIVITIES IN THE LAST NINE YEARS SHOWS THAT THE STATUTE HAS PRESERVED A REASONABLE BALANCE BETWEEN THE EXPRESSION OF BLOC SENTIMENT AND THE PROTECTION OF INDIVIDUAL UNION MEMBERS

In dealing with this issue, we now have the benefit of nine years of experience under the statute. This Court has long recognized that the changes of time and circumstances may alter one way or another the constitutional justification for governmental action. *Chastleton Corp. v. Sinclair*, 264 U. S. 543, 548; see also *Brown v. Board of Education*, 347 U. S. 483, 492-493. Similarly, the validity of Section 610 cannot be determined in the abstract without reference to its practical effects. Cf. *Alabama State Federation of Labor v. McAdory*, 325 U. S. 450, 465-466; *Borden's Farm Products Co. v. Baldwin*, 293 U. S. 194. Actual experience, as we shall develop, demonstrates that the statute, under the construction given

it by the Court in the *C. I. O.* decision, has not silenced the political voice of labor unions. It has, instead, proved to be a regulatory measure which has made it possible to discriminate between the legitimate expression of the union's views to its membership, for which general funds may properly be used, and more purely political activities, for which only special funds contributed voluntarily by the membership are properly used.

Since 1948, when four Justices would have held in the *C. I. O.* case that the "expenditure" provision of Section 610 was an unreasonable prohibition of "the expression of bloc sentiment" (335 U. S. at 143, concurring opinion of Mr. Justice Rutledge), the entire organizational structure of the American labor movement has undergone basic changes, and it is still in the process of centralizing and regrouping. In particular, changes have been made in the political committees of the major unions. There has been created a voluntary political organization consisting of committees, which parallel at every level the operative union organizations, to give public expression to union political sentiment. To appraise the impact of Section 610 on the ability of union members to articulate their collective political views in federal elections, and to meet the contention that Section 610 is a "complete prohibition" of the right of union majorities "to make expenditures for directly and openly publicizing their political views and information supporting them" (*United States v. C. I. O.*, *supra*, 335 U. S. at 145, per Mr. Justice Rutledge), it is useful to review the history of this development.

1. *The power of union majorities to express their collective political sentiments has been preserved through the development of voluntarily supported political committees*

In 1943, in response to the passage of Section 9 of the Smith-Connally Act (the War Labor Disputes Act, *supra*, p. 25), the C. I. O. organized its Political Action Committee (CIO-PAC).⁷ This organization, to avoid the prohibition against forced levies on the general treasuries of union locals for political "contributions" in postprimary union electioneering, relied on voluntary financial support from the membership of the various union subsidiaries. A similar organization, Labor's League for Political Education (AFL-LLPE), was established by the A. F. of L. shortly after passage of the Taft-Hartley Act in 1947, which extended the prohibitions of the Federal Corrupt Practices Act to "expenditures" for political purposes and to primary campaigns as well as general elections.⁸ In addition to the two major political committees, a number of independent unions also maintained political committees, such as the International Association of Machinists' Nonpartisan Political League and the Railway Labor's Political League.⁹ By 1954, there were forty-one separate political committees which operated in two or more

⁷ Tanenhaus, *Labor's Political Spending*, v. 16, *Jour. of Pol.*, 441, 449-450.

⁸ Daugherty and Parrish, *The Labor Problems of American Society*, p. 412; Chang, *Labor Political Action and the Taft-Hartley Act*, 33 *Neb. L. R.* 554, 558.

⁹ Chang, *Labor Political Action and the Taft-Hartley Act*, 33 *Neb. L. R.* 554, 558, fn. 25.

States and which reported their contributions and expenditures to the Clerk of the House of Representatives. This number, of course, does not include all of the State and local committees which do not so report.

Both the CIO-PAC and the AFL-LLPE, the two largest national committees, operated through State and local affiliates, which were supported through voluntary contributions collected directly from individuals rather than through union channels. Such contributions were divided evenly between State and national political committees.¹⁰ The organization and functions of the CIO-PAC have been described by its director as follows:¹¹

The formal structure of the local Political Action Committees varies greatly from local to local and from community to community. In most instances, the local union has a Political Action Committee with the president of the local acting as chairman, and a specially designated person does the actual day-to-day work. If the local is large enough to sustain paid officers, the political action worker may be a paid employee of the local. More often he is compensated for time lost from his job because of his political action activities. Other members of the committee include members of the local executive board, shop stewards, grievance com-

¹⁰ Keenan, *The AFL-LLPE and How It Works*, The House of Labor, pp. 114-115; Kroll, *The CIO-PAC and How It Works*, The House of Labor, pp. 121-122; AFL-CIO News, Vol. I, No. 17, March 31, 1956, pp. 1, 16.

¹¹ Kroll, *The CIO-PAC and How It Works* (*ibid.*), p. 120.

mitteemen, and other members of the local willing to work.

Above the local level there are the city and county Political Action Committees and the congressional district PAC. The city or county PAC parallels, in most instances, the city or county industrial union council, in that it is a delegate body composed of representatives of locals within the geographical area covered by the industrial union council. The congressional district PAC has no parallel in the industrial union structure but it, too, is a delegate body concerned primarily with election of the congressional candidate from that district. It exists principally in the large cities of the nation represented by a number of Congressmen (such as Chicago and Philadelphia).

The city or county PAC directs the political action work within its geographical area and selects candidates to be chosen by the voters within that area. Thus mayors, city councilmen, sheriffs, municipal and county judges, and other public officials on that level are supported or opposed according to the decisions of the city or county PAC.

The congressional district PAC performs a similar endorsement function with reference to congressional candidates.

On the next higher level are the State Political Action Committees. These committees are often more formal in their nature than the city or county PACs or the congressional district PACs in that they have constitutions, by-laws, and procedures in accordance with a fixed pattern. Virtually all states now have Political

Action Committees, formally established and operating under constitutions and by-laws.

The organization and functions of the AFL-LLPE have been described by its director as follows:¹²

There are local LLPE's in every state and principal city, but still not in every congressional district. Geographically, the organizational setup follows, for the most part, the same pattern as that of the political parties. At the same time it take advantage of AFL national, state, and local administrative arrangements.

But it should be understood that the administrative arrangements of local Leagues are very flexible. The local Leagues adjust their methods of operation to meet the conditions of their particular communities. They use all of the resources available in their areas—such as local AFL and CIO unions, PAC, and other interests groups—and coordinate the activities of the organizations working with them. They will also cooperate with the established political parties under given circumstances.

The policy committee on the state level is usually the State AFL Executive Council. The legislative body of the State LLPE is made up of delegates from the local unions and the local LLPE's. Voting quotas in some cases are determined on the basis of per capita tax payments to the State LLPE.

Local LLPE's are organized by area (comprising two or more congressional districts within the state), congressional districts, and city levels. There are also league representa-

¹² Keenan, *The AFL-LLPE and How it Works* (*ibid.*), pp. 113-115.

tives in local unions, union shops and plants, and election precincts. The officers of the local LLPE's are usually men and women holding office at a corresponding level of the local AFL union structure.

The local LLPE may either establish separate headquarters or share them with the central trades union. Headquarters are staffed to perform many of the same functions undertaken by local political party headquarters. From these offices the local League publishes facts about the candidates it supports, arranges their radio programs, issues posters and flyers, sends out letters and telegrams, and arranges speeches throughout the area it covers. Direct daily contact with the voters is maintained through representatives in union shops and leaders in election precincts. For example, each shop under the jurisdiction of the ILGWU has a political steward who works independently of the shop steward. His duties are: to keep members informed of actions taken by Congress and state legislatures; to encourage members to write to their Congressmen and legislators; to make sure that members and their families register and vote; and finally, to explain the issues of the political campaign.

NATIONAL ACTIVITIES

The national LLPE therefore has a huge task of coordinating policy and activities. To finance its program, the national LLPE collects voluntary contributions from individual union members. Local union shop collectors receive from the national LLPE office receipt books (printed in triplicate) and League buttons. A

button and the original copy of the receipt go to the contributor and the second copy is forwarded to national headquarters. The third copy is kept by the collector. The money is mailed to Washington weekly. The state LLPE is reimbursed for half of its collection. The remainder is allocated by national headquarters where it is most needed.

The national League provides the following services for the local Leagues and all other politically activated local AFL units:

1. *The League Reporter*, a four-page newspaper, is published weekly. It is sent to every AFL and LLPE affiliate and is available to anyone else who desires to subscribe. *The League Reporter* analyzes bills before Congress. It keeps its members informed of the voting record in the House and Senate. It reports national trends of interest to labor as culled from other sources.

In order to insure widespread dissemination of its news, this publication urges local Leagues, labor press, and union journals to reprint its articles. Mats and cuts are also available after publication in *The League Reporter*.

2. The national LLPE office prepares and broadcasts radio programs and gives assistance to the local LLPE's and the local AFL union radio stations in the preparation of their own programs. The national LLPE makes platters and distributes them to the local LLPE's for use on their stations. The local LLPE then prepares its own introductory remarks. These recordings are also made on phonograph records for use at local union meetings. And the national LLPE prepares programs for use on

nationwide hookups. It is up to the local LLPE's to persuade local network stations to carry the programs if they are not already doing so. At present, Frank Edwards is broadcasting over the Mutual network five nights weekly, reporting the AFL view of the news.

The radio department of the national LLPE advertises through *The League Reporter* the radio schedules of Congressmen and Senators friendly to labor and the local stations over which they will speak. In addition, the national LLPE supplies publicity material to the local Leagues for use in their localities, and suggests methods of using programs most fully, such as posting notices of radio programs on union bulletin boards and discussing programs at union meetings.

As these excerpts make clear, the committees selected candidates favorable to labor and actively participated in nationwide campaigning through every medium of communication, not only among the union membership but among the public at large."

The total extent of the actual contributions and expenditures of these committees is somewhat obscured by two factors: (1) the practice of including many items of political expenditures under the caption of "educational" purposes in reports to the House of Representatives; and (2) the fact that contributions and expenditures made by State and local LLPE's

¹¹ Wartenberg, *Political Action in a Congressional District*, The House of Labor (Hardman and Neufeld, ed.), pp. 126-133; Keenan, *The AFL-LLPE and How It Works* (*ibid.*, pp. 113-115); Kroll, *The CIO-PAC and How It Works* (*ibid.*, pp. 122-125).

and PAC's operating within a single State were not reported to the Clerk of the House of Representatives since the national committees maintained that such organizations were not subsidiaries of the national organization.¹⁴ Thus, while in the 1954 national elections a total of \$2,057,613 was reported to have been spent by forty-one labor organizations which filed such information with the Clerk of the House of Representatives, this is not an accurate representation of the total activities of labor in the national political field but only represents top-echelon political spending.¹⁵

The merger of the two principal labor federations, the AFL and the CIO, was effected in December, 1955. The new group, the AFL-CIO, is composed of unions having a combined membership of about fifteen million workers.¹⁶ In line with this amalgamation,

¹⁴ Tanenhaus, *Organized Labor's Political Spending: The Law and Its Consequences*, *supra*, pp. 462, fn. 64, 470.

¹⁵ Of the total amount of \$2,057,613 reported to have been spent by forty-one labor organizations in 1954, all but a small part of the total (*viz.* \$1,978,546) was spent by ten political committees. Of this amount, the bulk (\$1,240,115) was spent by the CIO-PAC and the AFL-LLPE. Most of this money was contributed directly to Congressional campaign committees, although some was reallocated to State PAC's and LLPE's. The 1954 report of the New York CIO-PAC, the only State political committee reporting as a committee operating in two or more States, indicates that the committee spent its political funds for political meetings, surveys of political attitudes, radio and television political advertising including radio "spot" announcements, political trailers, posters, pins, bumper signs, and other political materials.

¹⁶ See AFL-CIO News, Vol. I, No. 1, p. 1, Dec. 1950; Gamser, *After Merger—AFL-CIO's Program and Problems*, Vol. 7, No.

the political committees of the AFL and the CIO were merged into a new committee to be known as the Committee on Political Education (COPE). In addition, a political program "in the Gompers tradition" was adopted, including "more intensive campaigning for labor's friends and against labor's enemies."¹⁷ COPE is made up of local and State committees of AFL-CIO members, and a national committee consisting of the AFL-CIO Executive Council and officers of international unions. Its national chairman is AFL-CIO president George Meany, its secretary-treasurer is AFL-CIO's secretary-treasurer William F. Schnitzler, and its co-directors are the former national directors of PAC and LLPE, Jack Kroll and James L. McDevitt, respectively. The remainder of its national staff is made up of nineteen vice-presidents of the AFL-CIO.¹⁸ It is voluntarily financed by dollar drives as were its predecessor committees. Of every dollar contributed, half is used by local and State committees, and the other half is used by national COPE "to aid worthy candidates for national offices."¹⁹ According to its

2, *Labor Law Journal*, pp. 73, 76; *AFL-CIO News*, Vol. 1, No. 13, p. 2, Mar. 3, 1956.

¹⁷ Gamser, *After Merger—AFL-CIO's Program and Problems*, Vol. 7, No. 2, *Labor Law Journal*, pp. 73, 76.

¹⁸ *What Is Cope*, p. 2 (pamphlet of the AFL-CIO Committee on Political Education); *Political Memo from Cope*, No. 2-56, p. 1, and No. 4-56, p. 1. *Political Memo from Cope* is the regular bi-monthly publication of the AFL-CIO Committee on Political Education.

¹⁹ *What Is Cope* (*supra*), p. 4; and see *AFL-CIO News*, Vol. 1, No. 17, pp. 1, 16 (March 13, 1956).

own publications, "the policies of COPE are determined by the national committee of COPE in the light of actions of the AFL-CIO convention,"²⁰ although "endorsements for the Senate and House will be made by state and district units of the Committee."²¹

2. *Under the statute, as construed in United States v. C. I. O., 335 U. S. 106, there is ample opportunity for the union as an entity to express its collective views on political problems.*

The work of voluntary political action groups is by no means the full measure of labor's political activities.

In the first place, this Court's *C. I. O.* decision—that political views expressed in union newspapers and other "house organs" are not within the coverage of the statute—leaves open a large avenue for dissemination of the collective view of the union as an entity. This avenue is in fact extensively used. Professor Tanenhaus in his article "Organized Labor's Political Spending: The Law and Its Consequences" describes this trend as follows (16 *The Journal of Politics*, pp. 441, 464):

Narrow as the CIO holding appears, its practical consequences were considerable. Shortly after the 1948 elections the Administrative Committee of Labor's League for Political Education issued its first report. From the day of the CIO decision, wrote the Committee, "the

²⁰ *What Is Cope (supra)*, p. 3.

²¹ *Political Memo from COPE*, No. 4-56, p. 1.

weekly labor papers and union journals became our main instrument of political education." Labor papers reprinted special political articles designated particularly for that purpose, and at least one paper issued special editions, each "carefully tailored to the State to which it went with appropriate pictures and editorial matter." So effective did the labor press prove that LLPE found it necessary to publish no more than 1,250,000 pieces of campaign literature in 1948. Even the pamphlet-minded CIO, which had used 85 million pieces of literature in the 1944 campaign, distributed but 10 million copies of printed material in 1948 and 15 million in 1952. Clearly the labor press, "properly tailored", spared labor's political committees the expense of printing and distributing much costly literature.

Director Keenan wrote ("The AFL-LLPE and How It Works," *supra*, at 116):

Regularly published union papers and journals are not forbidden from carrying partisan political stories. Through these union publications, financed largely from union funds, we are able to get our message into every trade union home.

In spite of the difficulties created by Section 313, the 1948 election and the special elections during 1949 demonstrated that the authors of the Taft-Hartley Act were not successful in preventing unions and union members from organizing for political purposes. AFL unions are obviously determined to assume their proper responsibility to the public and to their members as far as political action is concerned.

Secondly, as noted above a large part of what is essentially political activity is carried out through "educational" programs. Director Keenan candidly stated (*supra*, at 116):

The League is scrupulously careful to operate within the terms of the Act as interpreted by our lawyers. Nevertheless, for certain important political activities, union funds and facilities can be used. For instance, between elections the activities of the League are devoted entirely to educational purposes. These activities involve informing our members on the legislative issues, action of Congress, and the voting records of Congressmen on specific pieces of legislation. For this purpose we use radio broadcasts and our weekly newspaper as well as special releases of various sorts. To finance these activities each International was asked to contribute 10 cents per member for the full period between December 1, 1949, and February 1, 1950. Since none of this money was to be used in behalf of any particular candidate, the contribution could be made from union funds. Another voluntary contribution drive was organized to finance our activities in the 1950 election when we were again bound by the Taft-Hartley restriction.

Thirdly, general funds can legitimately be used under Section 610 in behalf of State candidates and for the purpose of carrying on registration drives. "Thus," as Director Keenan pointed out (*ibid.*), "in many areas the preliminary work of registering our members and establishing precinct committees has been financed from funds raised by assessment."

This, then, is Section 610 in operation. Under the *C. I. O.* decision, the general funds of the union may be used for a wide variety of political activities. Even active political endorsement is permissible through the medium of regular union newspapers and other house organs directed primarily to the membership. It is only when the union undertakes active electioneering, on behalf of particular federal candidates and designed to reach the public at large, that general funds of all the members may not be used. Such activities must, under the statute, be financed instead by the voluntary contributions of those union members whose views coincide with the official union position. And the experience of the past nine years shows that complex and effective organizations can be maintained on the basis of such voluntary contributions. Union labor's voice has certainly not been silenced; it has hardly been muffled.

B. THE STATUTE IS DESIGNED TO ACHIEVE LEGITIMATE AND IMPORTANT LEGISLATIVE OBJECTIVES

As was developed at some length in the brief for the United States in the *C. I. O.* case (No. 695, O. T. 1947), Congress in enacting Section 610 was attempting to achieve several objectives: (1) to reduce what had come to be regarded in the light of past experience as the undue and disproportionate influence of labor unions upon federal elections; (2) to preserve the purity of such elections, and of official conduct ensuing from the choices made in them, against the use of aggregated wealth by union as well as corporate entities; and (3) to protect union members

holding political views contrary to those supported by the union from use of funds contributed by them to promote acceptance by the public of those opposing views. Following the lead of Mr. Justice Rutledge's concurring opinion in the *C. I. O.* case (335 U. S. at 135), we shall denominate these factors "undue influence," "purity of elections," and "minority protection" in our discussion. As Mr. Justice Rutledge commented (*ibid.*), they "are obviously interrelated, but not identical."

1. "*Undue influence*" and "*purity of elections*"

Although the prohibition in Section 9 of the War Labor Disputes Act against union "contributions" inhibited the direct subsidy of political candidates for federal office, it did not prevent large-scale "expenditures" by unions from general funds for political campaigning. In the Senate debates, this factor was stressed as the primary basis for the Section 304 amendment to the Taft-Hartley Act (the predecessor of 18 U. S. C. 610). See pp. 30-35, *supra*. The cause for this Congressional concern over the "expenditures" loophole was not organized labor's political activity in itself, for by 1947 political committees such as the CIO-PAC had become vocal organs of a large segment of labor and there was no intimation of any legislative desire to inhibit such activity so long as it was voluntarily financed.²² What Congress particu-

²² Senator Taft told the Senate (93 Cong. Rec. 6439, 6440):

"If the labor people should desire to set up a political organization and obtain direct contributions for it, there would be nothing unlawful in that."

larly sought to reach was the union practice of spending general funds contributed by all members to finance the presentation of a single viewpoint regardless of the diversity of political views within the membership. Thus, the thrust of Section 304 was directed against the use of an often large "captive audience" of unwilling participants in an attempt to achieve a political goal sometimes desired by a majority of the members, but often decided upon by a policy committee or regional conference whose contact with the individual unionists may be fairly remote.²³ Because of comparable problems with respect to corporations and their stockholders, the provision was also made

* * * * *

"A union can * * * organize something like the PAC, a political organization, and receive direct contributions, just so long as members of the union know what they are contributing to, and the dues which they pay into the union treasury are not used for such purpose."

²³The selection of candidates for political endorsement, like other questions of political policy, are not submitted to local unions to obtain any clear-cut consensus of individual thinking. In this respect the situation involved in *DeMille v. American Federation of Radio Artists*, 31 Cal. 2d 137, 187 Pac. 2d 769, certiorari denied, 333 U. S. 876, seems to be atypical. National union officers and observers are in agreement that political policy toward federal elections is settled in regional political conferences in committee. See Kroll, *The CIO-PAC and How It Works*, The House of Labor (Hardman and Neufeld), pp. 117, 122-123; Keenan, *The AFL-LLPE and How It Works*, The House of Labor, p. 133; Hudson and Rosen, *Union Political Action*, 7 Industrial and Labor Relations Rev., pp. 404, 407-408; *Political Memo from COPE*, No. 4-56, p. 1. And see the statement attributed to AFL-CIO Vice-President Walter P. Reuther, *AFL-CIO News*, December 17, 1955, Vol. I, No. 2, p. 1.

applicable to corporate expenditures from general funds.

Congress has frequently recognized the dangers of pressure groups which purport to speak for large blocs of voters, and has in many ways restricted their activities to the end that the public and the legislators themselves will not be deceived as to the true nature of their constituent membership and the source of their financial strength. The Federal Lobbying Act is but one example of this problem. *United States v. Harriss*, 347 U. S. 612, 625. Section 610 is another. If unions or corporations could make compulsory calls against the general funds of their organizations, either group would be in a particularly strong position to exert pressure completely disproportionate to the number of members or stockholders who support the official position. In addition, the practice would facilitate shifting funds to national or regional committees for use in selected regions and utilizing the limited channels of public communication so as to submerge through sheer spending power any effective rival viewpoint. Since the political advertising which precedes an election is frequently a vital factor in influencing voters, its monopolization by artificial entities acting under a vague and attenuated proxy from their membership could seriously threaten the integrity of the elective process, especially where the public is never adequately apprised as to the actual constituent voting strength of the entity in that locality or as to voter sentiment within the entity itself. In enacting Section 610, Congress was in part seeking to deal with this problem. Cf. *United States v.*

United States Brewers' Association, 239 Fed. 163, 168-169 (W. D. Pa.) (sustaining the constitutionality of the ban against corporate contributions).²⁴ Just as with legislators faced with the demands of "special interest groups seeking favored treatment while masquerading as proponents of the public weal," so too it can be said that "full realization of the American ideal of government * * * depends to no small extent" on the ability of the general electorate "to properly evaluate such pressures." *United States v. Harriss*, 347 U. S. 612, 625.

Moreover, when the prerogative of choice shifts from individual members or stockholders to the artificial entity, so do the reciprocal obligations of the political candidate in many cases. The tendency to attach strings to such political support and to demand prior commitments of the favored candidates is vastly increased where the union or corporation can obtain political proxies of its membership and, without the necessity of a referendum, speak on most issues as a

²⁴ "And when we reflect that Congress is here dealing with elections at which Representatives in Congress are being voted for; that an election is intended to be the free and untrammelled choice of the electors; that any interference with the right of the elector to make up his mind how he will vote is as much an interference with his right to vote as if prevented from depositing his ballot; that the concerted use of money is one of the many dangerous agencies in corrupting the elector and debauching the election; that any law the purpose of which is to enable a free and intelligent choice, and an untrammelled expression of that choice in the ballot box, is a regulation of the manner of holding the election—the power of Congress to prohibit corporations of the state from making money contributions in connection with any such election appears to follow as a natural and necessary consequence."

single voice for all its members or stockholders. Regardless of whether this almost inevitable synchronization of political goals between the artificial entity and its sponsored candidate could be deemed "corrupt" in the strictest sense, it clearly can be thought to deprive the elective process of that individualism which is a necessity of democratic government.²⁵ It

²⁵ Other provisions of the Federal Corrupt Practices Act also evidence Congressional recognition that the elective process may be corrupted short of outright bribery. See *Burroughs and Cannon v. United States*, 290 U. S. 534. The Act requires every political committee to have a chairman and a treasurer who shall keep an account of all contributions and expenditures (2 U. S. C. 242) and shall report such data to the Clerk of the House of Representatives at stated times (2 U. S. C. 244). Anyone else who makes an expenditure aggregating more than fifty dollars within a calendar year for the purpose of influencing an election in two or more States is similarly required to report it to the Clerk of the House of Representatives (2 U. S. C. 245). Political candidates are also required to make statements to the Clerk of the House of Representatives concerning contributions and expenditures, the names of the persons involved, and any promises or pledges made by him relative to appointments either to public or private employment together with an identification of such person (2 U. S. C. 246). Finally, the Act limits to a definite sum the amount of expenditures which may be incurred by such candidate (2 U. S. C. 248). Other legislative provisions now contained in the Criminal Code limit individual contributions to candidates to \$5,000 during any calendar year, and prohibit even indirect benefits to such candidates through purchasing goods, commodities, advertising, or articles of any kind which would inure to the candidate's benefit, except in connection with "the usual and known business, trade, or profession of any candidate" (18 U. S. C. 608). No political committee is allowed to "receive contributions aggregating more than \$3,000,000, or make expenditures aggregating more than \$3,000,000 during any calendar year" (18 U. S. C. 609).

too is an evil to which Congress responded in enacting Section 610.

2. "Minority protection"

Congress was also concerned with the rights of dissident union members who were being forced by virtue of their membership to support political causes to which they did not subscribe. In fact, as Mr. Justice Rutledge's concurring opinion in the *C. I. O.* case (335 U. S. at 135) points out, the "minority protection" objective of the statute was the "central theme" of the legislative debates. This Congressional concern is not without substantial basis.

A union functions primarily "to give laborers opportunity to deal on an equality with their employer" (*N. L. R. B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33), not as a political club to influence the general public. The political club is a voluntary organization, openly partisan, and has no power of coercing its membership to subscribe to its group policy by jeopardizing their employment status. One may withdraw at will and thereby signify his disapproval of group policy. On the other hand, at least under the union-shop system, union membership is mandatory and a dissident must forego his employment if he refuses to pay dues because of his objections to political expenditures by the union. Cf. *DeMille v. American Federation of Radio Artists*, *supra*, 187 Pac. 2d at 772. It is of course true that a union member surrenders his right to independent action to the union majority in many ways relative to his employment relationship. He has not, how-

ever, either by joining the union or by paying dues into its treasury, assigned away the right to act for himself in political matters. Compare *DeMille v. American Federation of Radio Artists*, *supra*, 187 Pac. 2d at 774-775, with *Amalgamated Society of Railway Servants v. Osborne* (1910), A. C. 87, 115.

Yet, without the protection of Section 610, a union member can be compelled to help subsidize the active electioneering of a candidate whom the union member heartily opposes. Nor is the problem only one of the integrity of personal convictions; it also has its practical aspects. To many a union member, for example, the amount of an assessment imposed on him for political purposes might well represent the total portion of his income which he can afford to expend on the particular political campaign. These members would be effectively precluded from giving any financial support, direct or indirect, to a candidate lacking the official labor stamp of approval. It was the desire to prevent such practices—forcing dissident minorities to support candidates they oppose, while at the same time impairing their financial capacity to support candidates they favor—that in large measure led to enactment of the “expenditure” provision. In interpreting the Railway Labor Act and the Labor Management Relations Act, this Court has recognized an enforceable obligation on the part of a union to safeguard without discrimination the economic interests of all members of the craft represented by the union. *Steele v. Louisville & Nashville Railroad Co.*, 323 U. S. 192; *Tunstall v. Brotherhood of Locomotive Firemen*, 323 U. S. 210; *Graham v. Brotherhood of*

Locomotive Firemen, 338 U. S. 232; *Railroad Trainmen v. Howard*, 343 U. S. 768; *Syres v. Oil Workers*, 350 U. S. 892. Surely, the political rights of union minorities are no less entitled to statutory protection.

Indeed, the rights of minorities under somewhat similar circumstances have even received constitutional protection. Thus, in *Board of Education v. Barnette*, 319 U. S. 624, it was held that requiring children in public schools to engage in a flag-salute ceremony—"a ceremony so touching matters of opinion and political attitude" (*id.* at 636)—violates the First and Fourteenth Amendments. We express no view as to the applicability of the *Barnette* holding to the use of general union funds for electioneering purposes.²⁰ Obviously there are a number of significant differences, including differences as to the

²⁰ Only recently, in *Railway Employees' Department v. Hanson*, 351 U. S. 225, it was contended that a Railway Labor Act amendment permitting "union shop" agreements in the industries covered by the Act was unconstitutional on the ground, among others, that general union funds might be used for political purposes in conflict with the political convictions of a union minority. The Court, in upholding the amendment, found it unnecessary to pass on this contention (*id.* at 238): "It is argued that compulsory membership will be used to impair freedom of expression. But that problem is not presented by this record. * * * If other conditions are in fact imposed, or if the exaction of dues, initiation fees, or assessments is used as a cover for forcing ideological conformity or other action in contravention of the First Amendment, this judgment will not prejudice the decision in that case. * * *" To the extent that Section 610 prevents union expenditures for active electioneering, the question thus reserved in the *Hanson* case is avoided.

"governmental action" involved. Compare *Railway Employees Department v. Hanson*, 351 U. S. 225, 232; *Steele v. Louisville & Nashville R. Co.*, 323 U. S. 192, 198-199. On the other hand, from the standpoint of the individual affected, being compelled to help subsidize a campaign which violates his political convictions may well be as repugnant as being compelled to undergo a ceremony which violates his religious convictions. Regardless of whether the First Amendment forbids such compulsion of union minorities, Congress plainly could take cognizance of the problem and attempt to work out a solution. Confronted with an attempt by a "private" group to frustrate the right of political expression, Congress is not required to stand idly by. Cf. *Terry v. Adams*, 345 U. S. 461.

The solution which it adopted is, ironically enough, now attacked under the First Amendment on the ground that it interferes with the expression of bloc sentiment. The First Amendment, traditionally a refuge for the dissident minority against the dominant majority, is now invoked on behalf of the dominant majority against the dissident minority. It is suggested that majority rule must prevail in this area just as it does in so many other aspects of our national life.²⁷ There is no basis for assuming, however, that clear-cut political choices are invariably or even frequently offered to the constituent membership of

²⁷ See Chang, *Labor Political Action and the Taft-Hartley Act*, 33 Neb. L. R. 554, 568-569; Tanenhaus, *Organized Labor's Political Spending: The Law and Its Consequences*, 16 Journ. of Pol. 441, 368-469.

the local unions which they may accept or reject according to majority rule. As we have shown, the increasing centralization of union strength into a national hierarchy has rendered local unions even less autonomous in that respect, and admittedly political as well as other policy decisions are commonly made at the regional or national level without any referendum, particularly in regard to the use of funds in national elections. See pp. 39-48, *supra*. If unions were allowed to use treasury funds for electioneering purposes, it is highly doubtful that the union member would be given any meaningful choice in their ultimate disposition.

Moreover, even assuming *arguendo* that the official labor position on any given issue does reflect the will of the majority, we know of no principle of constitutional law which gives absolute protection to the power of an artificial entity—created primarily for the purpose of protecting the employee's rights as an employee, and not for partisan purposes—to pool the political thoughts of its membership and to present only one viewpoint in campaigning for a particular candidate. Particularly is this so where, as here, membership in the group is frequently mandatory and there plainly is no voluntary surrender by individual members of their right to act for themselves in political matters. Only through a holding that the dominant faction is entitled, under the First Amendment, to the financial support of the minority can the constitutional objection to Section 610 be sustained. But "coercive elimination of dissent" is the very

antithesis of the "freedom to differ" which the First Amendment was designed to protect (*West Virginia State Board of Education v. Barnette*, 319 U. S. 624, 641, 642). The Amendment rests on the premise "that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public." *Associated Press v. United States*, 326 U. S. 1, 20. It provides no authority to enforce compliance in political activities on an unwilling minority.

The need of a legal limitation on the use of general union funds to promote a union political orthodoxy has been recognized by Great Britain, New South Wales, and Western Australia. Those governments have at various times required that political expenditures be made from separate funds, that contributions cannot be made a condition of employment, and that those who cannot subscribe to the purpose of the expenditure may abstain from contributing without losing any benefits or being placed under any liability.²⁸ Placing the political activities of unionists on a voluntary basis achieves the same result. In addition, it renders the political committees which expend the funds directly accountable to the individual unionist, who may at any time register his disapproval by refusing to make a further contribution. Under this

²⁸ See Foenander, *Trade Union Rules and the "Political Levy"*—*Australia*, Vol. X, No. 1 (1953), Univ. of Toronto L. J., pp. 73-82; *Amalgamated Society of Railway Servants v. Osborne* (1910), A. C. 87; *Ironworkers Case*, 61 Commonwealth Arbitration Reports 726 (1948).

system, there is no "captive audience" of dissenters who are forced to aid political campaigning to which they cannot subscribe.

It may be conceded that a labor union, in the interest of the economic function for which it was primarily organized, has a legitimate interest in political affairs and therefore a right as an entity to present its views.²⁹ As we have shown (*supra*, pp. 37-51), however, the statute as construed in the *C. I. O.* case leaves ample opportunity for the expression of this collective point of view. All sorts of union political activities remain outside the coverage of the statute. Even partisan statements of the union's position on particular candidates in an election can be, and are, effectively presented in union newspapers. All that the statute prohibits is the use of general funds of the union, representing the contributions of what may be a substantial minority, from being used for active public electioneering on behalf of a particular candidate.

C. THE STATUTE IS AN APPROPRIATE EXERCISE OF THE CONGRESSIONAL POWER TO REGULATE THE CONDUCT OF FEDERAL ELECTIONS

These considerations which led Congress to enact Section 610—the manipulation of the elective process in a manner inconsistent with the principles of democratic control, and the use of general funds to support ideas and candidates opposed by a substantial minority—are even more cogent today. The consolidation of

²⁹ See, e. g., Chang, *Labor Political Action and the Taft-Hartley Act*, 33 Neb. L. R. 554.

unions comprising a membership of approximately fifteen million workers into the AFL-CIO organization has brought with it a commensurate consolidation of political committees and a greatly increased spending power to speak for American labor in political matters.³⁰ This development adds further support to the judgment of Congress that a limitation should be placed on the spending power of artificial entities, unions and corporations alike, in connection with federal elections.

In the light of the objectives Congress sought to achieve, and measured against the public interest involved, Section 610 is not an invalid restraint on group political expression within the condemnation of the First Amendment. Even the political activities of individuals, in whom rests the ultimate sovereignty of the nation, have to some extent been limited in connection with elections and other governmental processes. Thus in *United Public Workers v. Mitchell*, 330 U. S. 75, this Court sustained the power in Congress to make it unlawful for any person employed in the executive branch of the federal government to "take any active part in political management or in political campaigns." It had previously recognized the necessity of limiting the political activities of public office holders to preserve the purity of the electoral process. *United States v. Wurzbach*, 280 U. S. 396; *Ex parte Curtis*, 106 U. S. 371. More recently,

³⁰ The Secretary-Treasurer of COPE, William F. Schnitzler, recently told a regional conference of COPE (AFL-CIO News, Vol. 1, No. 19, p. 5, April 14, 1956: "When COPE talks, it talks for labor in political matters."

in *United States v. Harriss*, 347 U. S. 612, the Court sustained the constitutionality of the Federal Lobbying Act against a challenge based on First Amendment grounds, noting that Congress had "acted in the same spirit and for a similar purpose in passing the Federal Corrupt Practices Act—to maintain the integrity of a basic governmental process." *Id.* at 625.

Under these decisions, the constitutionality of Section 610 would appear clear. The ends Congress has sought to attain are all legitimate and significant; on the other hand, the restrictions imposed are neither too drastic nor inappropriate, and almost a decade of experience has proved that union participation in politics, far from being destroyed, has continued to flourish. Certainly, unions and corporations enjoy no First Amendment status superior to the rights of the individuals who compose the group. *United States v. White*, 322 U. S. 694; *Joint Anti-Fascist Committee v. McGrath*, 341 U. S. 123, 184 (concurring opinion of Mr. Justice Jackson); *United States v. Morton Salt Co.*, 338 U. S. 632. Moreover, as already pointed out, Section 610 operates to protect union members and corporate stockholders from group regimentation in political matters. In this respect, the statute furthers, rather than frustrates, the purpose of the First Amendment. If it were true that "private" groups enjoy a constitutional immunity in interfering with the exercise of free speech by their members, these individual rights could well be rendered illusory. Cf. *Terry v. Adams*, *supra*.

The implications, as we see them, of a holding of unconstitutionality in this case should be clearly stated. In the constitutional hierarchy of values, there appears to us to be no rational distinction for First Amendment purposes between unions and corporations.²¹ Thus, if Congress cannot constitutionally prohibit the use of general union funds for active electioneering on behalf of particular candidates, it would follow (even apart from the problem of severability) that the ban on similar expenditures by corporations would likewise be invalid. The result, for all practical purposes, would be to nullify the ban on "contributions" by both unions and corporations; for, as the legislative history of Section 610 makes clear, regulation of direct subsidies to candidates is of little avail if it can be avoided by the simple expedient of paying the expenses of the candidates' campaigns. Such a result, we believe, is not required by the Constitution. Congress is not so impotent that it cannot place reasonable limitations on the power of artificial entities, unions and corporations alike,

²¹ Whether an organization is a corporation or an association, it is capable of exerting undue influence in the electoral system, is comprised of individual members whose several and joint interests must be protected, and is primarily concerned with its business interests, although each claims that the attainment of those economic goals compels it to engage in political activities to maintain its own interests. In all respects relevant to this case, therefore, the two organizational forms are on a parity; the legal differences are irrelevant. Cf. *Amalgamated Society of Railway Servants v. Osborne* (1910), A. C. 87, 104-105. And see Tanenhaus, *Organized Labor's Political Spending*, *supra*.

to substitute money for the expression of popular will in federal elections.

The statute, in what we conceive to be its proper coverage, does not unduly limit the entity from expressing its views when it prohibits the use of general funds for active political electioneering. Rather, it leaves sufficient scope for expression of the viewpoint which may legitimately be said to be that of the entity as such, while at the same time it secures the freedom of dissent for the individual member or stockholder in what is the essentially personal right of actively supporting a particular candidate in an election. Congress, in the interest of preserving the purity of elections and the guarantee of individual expression, has acted within its constitutional limitations.

CONCLUSION

For the reasons stated, the judgment of the court below should be reversed and the cause should be remanded to the district court for trial.

J. LEE RANKIN,
Solicitor General.

WARREN OLNEY III,
Assistant Attorney General,

BEATRICE ROSENBERG,
CARL H. IMLAY,
Attorneys.

AUGUST 1956.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1956

UNITED STATES OF AMERICA,
Appellant,
v.

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO), *Appellee*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN

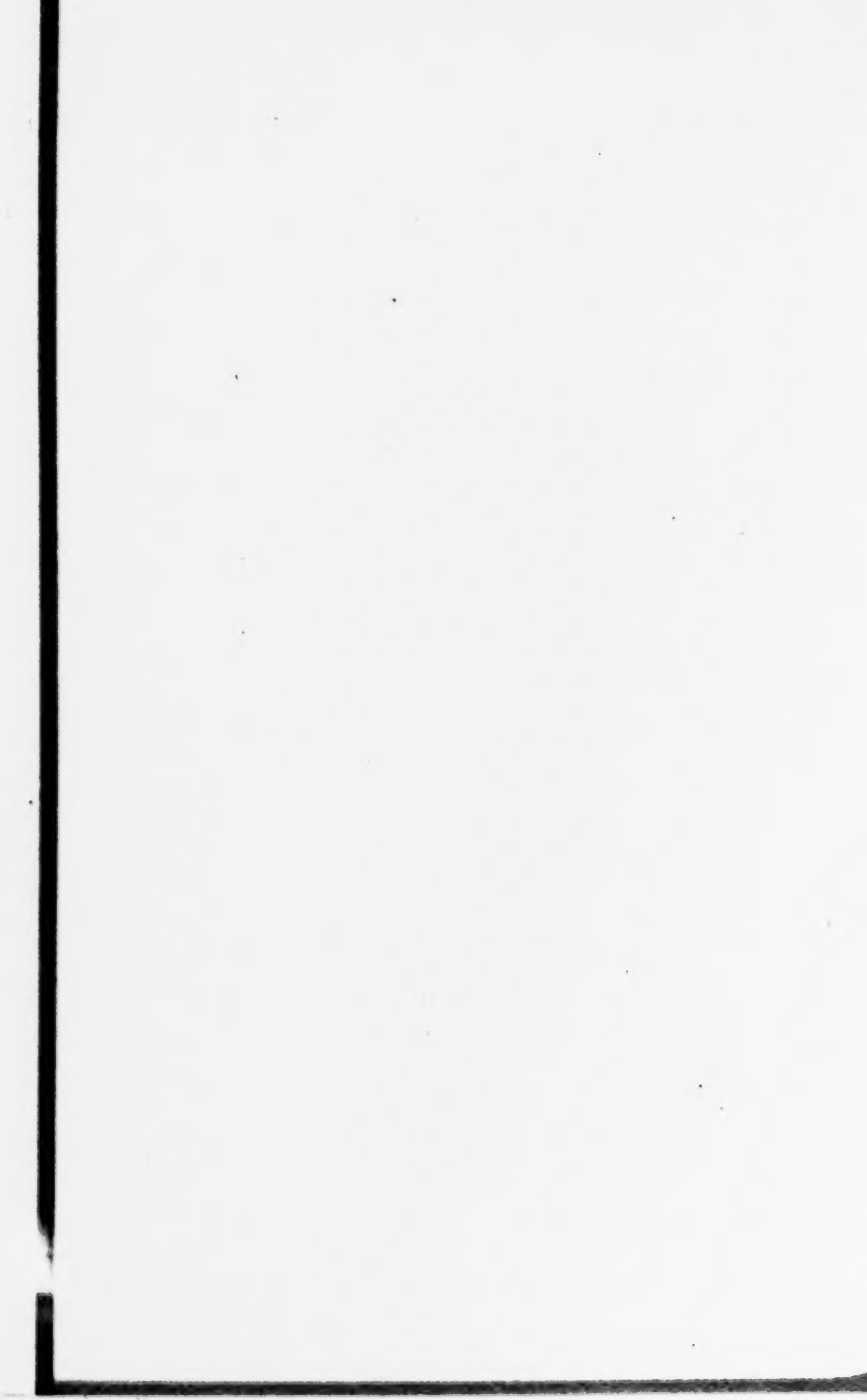
BRIEF FOR APPELLEE

HAROLD A. CRANEFIELD,
8000 East Jefferson Avenue,
Detroit 14, Michigan;

JOSEPH L. RAUH, JR.,
1631 K Street, N. W.,
Washington 6, D. C.
Attorneys for Appellee.

Of Counsel:

JOHN SILARD,
NORMA ZARKY,
KURT HANSLOWE,
REDMOND H. ROCHE, JR.



INDEX

	Page
Opinion Below	1
Jurisdiction	1
Questions Presented	2
Statutes Involved	3
Statement	5
Summary of Argument	7
Argument	13
I. The Question Before This Court Is the Sufficiency of the Indictment as Construed by the District Court Rather Than the Sufficiency of the Indictment as Interpreted by the Government for the First Time in This Court	13
1. Introduction	13
2. The District Court's Construction of the Indictment	14
3. The District Court's Construction of the Indictment Is Not Subject to Challenge on Direct Appeal	19
4. The Government Asserts Its Right to Prove Matters Excluded by the District Court's Construction of the Indictment	20
5. The Government's Present Construction of the Indictment Would Render It Invalid	22
6. Appropriate Disposition of Government's Direct Appeal	26
II. Payments by a Labor Union for Commercial Television Broadcasts to Inform Its Members and Others of the Position of the Union on Candidates for Representatives or Senators in Congress Are Not Expenditures Prohibited by 18 U.S.C. 610	30
III. Section 610 Abridges Freedom of Speech, of the Press, of Assembly and of Petition	

	Page
in Violation of the First Amendment to the Constitution of the United States	46
A. The First Amendment Is Nowhere More Directly Applicable Than in the Area of Free Political Discussion and Association	46
B. The Statute Prohibits that Free Political Discussion and Association Which Lies at the Heart of the First Amendment	51
C. The Rights Guaranteed by the First Amendment Have Been Protected From Much Milder Restraints Than This Statute Imposes	56
D. No Valid Justification Has Been Offered for the Prohibition of Union Political Expression	60
1. "Undue Influence" and "Purity of Elections"	61
2. Minority Protection	64
E. The Statute Is Not Restricted to the Elimination of the "Evils" Offered As Justification For Prohibiting Union Political Advocacy	70
F. The Proscribed Conduct Is Not Clearly Defined	72
G. Cases Arising Under This and Similar Statutes Have Held Such Statutes to Be Unlawful Abridgments of First Amendment Freedoms	74
IV. Section 610 Unlawfully Abridges the Right of Appellee and Its Members to Choose Congressional Representatives, Guaranteed by Article I, Section 2, of and the Seventeenth Amendment to the Constitution	81
V. The Prohibition of Union Expenditures in Connection With a Federal Election Is an Arbitrary Discrimination Which De-	

	Page
prives Unions and Their Members of Liberty Without the Due Process of Law Guaranteed by the Fifth Amendment	88
A. Discriminatory Laws Violate Due Process Guaranties	89
B. Section 610 Falls As Discriminatory Legislation	91
1. The prohibition against labor union expenditures is especially injurious because opponents of labor who already enjoyed undue political power were thereby given further political advantage	91
2. Justifications of the prohibition of election expenditures by unions are lacking in any sound policy basis not equally applicable to other association of individuals	98
3. Section 610 was enacted because of Congressional animosity toward labor unions	101
VI. Section 610 Is Vague and Indefinite and Fails to Provide a Reasonably Ascertainable Standard of Guilt, in Violation of the Fifth and Sixth Amendments to the Constitution	104
VII. Conclusion	110

TABLE OF CASES

<i>AFL v. Swing</i> , 312 U.S. 321	100
<i>Andres v. United States</i> , 333 U.S. 740	35
<i>Bank of Augusta v. Earle</i> , 13 Pet. 519 (U. S. 1839)	100
<i>Blake v. McClung</i> , 172 U.S. 239	100
<i>Blitz v. United States</i> , 153 U.S. 308	23
<i>Bolling v. Sharpe</i> , 347 U.S. 497	90, 91, 98

	Page
<i>Bowe v. Secretary of the Commonwealth</i> , 320 Mass. 230, 69 N. E. (2d) 115	75, 78, 79, 85
<i>Breese v. United States</i> , 226 U.S. 1	29
<i>Bridges v. California</i> , 314 U.S. 252	50
<i>Cantwell v. Connecticut</i> , 310 U.S. 296	50, 70, 72, 80, 81
<i>Capella v. Zurich General Acc. Liability Ins. Co.</i> , 194 F. 2d 558 (CA 5, 1952)	29
<i>Connally v. General Construction Co.</i> , 269 U.S. 385	104
<i>Curran v. Wallace</i> , 306 U.S. 1	90
<i>DeJonge v. Oregon</i> , 299 U.S. 353	34, 47, 70, 72, 80
<i>DeMille v. American Federation of Radio Artists</i> , 31 Cal. 2d 137, 17 Pac. 2d 769, cert. denied, 333 U.S. 876	67
<i>Detroit Bank v. United States</i> , 317 U.S. 329	90
<i>Evans v. United States</i> , 153 U.S. 584	24
<i>Ex Parte Jackson</i> , 92 U.S. 727	58
<i>Ex Parte Yarborough</i> , 110 U.S. 651	82, 83
<i>Fontana v. United States</i> , 262 Fed. 283 (C.C. 8, 1919)	24
<i>Gompers v. Bucks Stove & Range Co.</i> , 221 U.S. 418	65
<i>Grosjean v. American Press Co.</i> , 297 U.S. 233, 34, 48, 53, 57, 75, 90, 101	101
<i>Guinn v. United States</i> , 238 U.S. 347	101
<i>Hague v. CIO</i> , 307 U.S. 496	58, 75, 100
<i>Harkin v. Brundage</i> , 13 F. 2d 617 (CA 7, 1926), rev'd for other reasons, 276 U.S. 36	29
<i>Hemphill v. Orloff</i> , 277 U.S. 537	100
<i>Herd v. Hodge</i> , 334 U.S. 24	90
<i>Herndon v. Lowry</i> , 301 U.S. 242	72, 104
<i>Hirabayashi v. United States</i> , 320 U.S. 81	90
<i>Holmgren v. United States</i> , 217 U.S. 509	29
<i>Houle v. Helena Gas & Electric Co.</i> , 31 F. 2d 671 (CA 9, 1929)	29
<i>Hurtado v. California</i> , 110 U.S. 516	89
<i>Independent Service Corp. v. Tousant</i> (Dist. Mass.), 56 Fed. Sup. 75	75
<i>J. I. Case Co. v. N.L.R.B.</i> , 321 U.S. 332	66
<i>Jones v. Opelika</i> , 319 U.S. 103, vacating 316 U.S. 584	73
<i>Joseph Burstyn, Inc. v. Wilson</i> , 343 U.S. 495	59, 70, 74
<i>Kunz v. New York</i> , 340 U.S. 290	59
<i>Lanzetta v. New Jersey</i> , 306 U.S. 451	105

	Page
<i>Ledford v. United States</i> , 155 F. 2d 574 (CA 6) <i>cert. denied</i> 329 U.S. 733	84
<i>Liberty Warehouse Co. v. Burley Tobacco</i> , 276 U.S. 71	100
<i>Lovell v. Griffin</i> , 303 U.S. 444	58
<i>Mabee v. White Plains Publishing Co.</i> , 327 U.S. 178	90, 101
<i>Martin v. Imbrie</i> , 262 Fed. 44 (CA 2, 1919)	29
<i>Martin v. Struthers</i> , 319 U.S. 141	53, 58
<i>May Department Stores Co. v. National Labor Relations Board</i> , 326 U.S. 376	75
<i>Meyer v. W. R. Grace & Co.</i> , 290 Fed. 785 (CA 7, 1923)	29
<i>Missouri v. May</i> , 194 U.S. 267	98
<i>Missouri, K. & T. Ry. Co. v. Wilhoit</i> , 160 Fed. 440 (CA 8, 1908)	29
<i>N. L. R. B. v. Jones & Laughlin Steel Corp.</i> , 301 U.S. 1	65
<i>N. L. R. B. v. A. J. Tower Co.</i> , 329 U.S. 324	65
<i>Near v. Minnesota</i> , 283 U.S. 697	48
<i>New York Life Ins. Co. v. Calhoun</i> , 114 F. 2d 526 (CA 8, 1940), <i>cert. denied</i> 311 U.S. 701	29
<i>Nichols v. Coolidge</i> , 274 U.S. 531	90
<i>Niemotko v. Maryland</i> , 340 U.S. 268	59
<i>Orenstein v. United States</i> , 191 F. 2d 184 (CA 1, 1951)	29
<i>Perego v. Dodge</i> , 163 U.S. 160	29
<i>Pickett v. United States</i> , 216 U.S. 456	29
<i>Saia v. People of State of New York</i> , 334 U.S. 558	58, 80
<i>San Juan Light & T. Co. v. Requena</i> , 224 U.S. 89	29
<i>Schneider v. State of New Jersey</i> , 308 U.S. 147, 34, 48, 51, 70, 80	
<i>Screws v. United States</i> , 325 U.S. 91, 128 (concurring opinion)	25
<i>Smails v. O'Malley</i> , 127 F. 2d 410 (CA 8, 1942)	29
<i>Smith v. Allwright</i> , 321 U.S. 649	82, 83
<i>Steele v. Louisville & Nashville Railroad Co.</i> , 323 U.S. 192	66
<i>Steward Machine Co. v. Davis</i> , 301 U.S. 548	90
<i>Stromberg v. California</i> , 283 U.S. 359	47, 72, 73, 75, 81

	Page
<i>Superior Films v. Department of Education of Ohio</i> , 346 U.S. 587	59
<i>Swafford v. Templeton</i> , 185 U.S. 487	82, 83
<i>Terminiello v. Chicago</i> , 337 U.S. 1	58
<i>Thomas v. Collins</i> , 323 U.S. 516	50, 53, 58, 78, 81, 89, 100
<i>Thornhill v. Alabama</i> , 310 U.S. 88	50, 72, 80, 100
<i>Truax v. Raich</i> , 239 U.S. 33	101
<i>United Public Workers v. Mitchell</i> , 330 U.S. 75	85, 86
<i>United States v. Aczel</i> , 219 Fed. 917 (D. Ind.)	84
<i>United States v. Borden Co.</i> , 308 U.S. 188	7, 14, 20
<i>United States v. Britton</i> , 107 U.S. 655	24
<i>United States v. Carll</i> , 105 U.S. 611	23
<i>United States v. Carolene Products Co.</i> , 304 U.S. 144	50, 87
<i>United States v. CIO</i> , 77 F. Supp. 355	67, 76
<i>United States v. CIO</i> , 335 U.S. 106	7, 9, 18, 30, 31, 42, 53
<i>United States v. Classic</i> , 313 U.S. 299	11, 20, 82, 84
<i>United States v. Construction and General Laborers</i> Local Union, 101 F. Supp. 869 (W.D. Mo. 1951)	30, 42, 77
<i>United States v. Corbett</i> , 215 U.S. 233	24
<i>United States v. Cruikshank</i> , 92 U.S. 542	23, 24, 25
<i>United States v. Debrow</i> , 346 U.S. 374	24
<i>United States v. Ellis</i> , 43 F. Supp. 321 (D.S.C.)	84
<i>United States v. Goldberg</i> , 123 F. Supp. 385 (D.C. Minn. 1954)	24
<i>United States v. Harriss</i> , 347 U.S. 612	64, 71
<i>United States v. Hastings</i> , 296 U.S. 188	20
<i>United States v. Hess</i> , 124 U.S. 483	24
<i>United States v. Johnson</i> , 53 F. Supp. 167 (D.C. Del. 1943)	24
<i>United States v. Jones</i> , 345 U.S. 377	20, 28, 29
<i>United States v. Kahriger</i> , 345 U.S. 22	90
<i>United States v. Keitel</i> , 211 U.S. 370	20
<i>United States v. L. Cohen Grocery Co.</i> , 255 U. S. 81 23, 25, 104	
<i>United States v. Lamont</i> , — F. 2d — (CA 2) decided August 14, 1956	24
<i>United States v. Metzdorf</i> , 252 Fed. 933 (D.C. Mont. 1918)	23
<i>United States v. Mosely</i> , 238 U.S. 383	82
<i>United States v. Painters Local Union</i> , 172 F. 2d 854 (CA 2, 1949)	9, 28, 30, 34, 35, 36, 42, 77

	Page
<i>United States v. Painters Local Union</i> , 79 F. Supp. 516 (D.C. Conn. 1948)	35
<i>United States v. Potter</i> , 56 Fed. 83 (C.C.D. Mass. 1892)	24, 25
<i>United States v. Rumely</i> , 345 U.S. 41	32
<i>United States v. Saylor</i> , 322 U.S. 385	82, 84
<i>United States v. Sosnowitz</i> , 50 F. Supp. 586 (D.C. Conn. 1943)	25
<i>United States v. South-Eastern Underwriters Association</i> , 322 U.S. 533	20
<i>United States v. Wayne Pump Co</i> , 317 U.S. 200	29
<i>United States v. Willard</i> , 8 F. Supp. 356 (D.C. Mich. 1934)	25
<i>United States v. Wilson</i> , 72 F. Supp. 812 (W.D. Mo.)	84
<i>Virginia Railway Co. v. Mullens</i> , 271 U.S. 220	29
<i>Weeds, Inc. v. United States</i> , 255 U.S. 109	25
<i>Western Turf Association v. Greenberg</i> , 204 U.S. 359	75, 100
<i>West Virginia State Board v. Barnette</i> , 319 U.S. 624	50
<i>Whitney v. California</i> , 274 U.S. 357	47, 75
<i>Wieman v. Updegraff</i> , 344 U.S. 183	53, 70
<i>Wiley v. Sinkler</i> , 179 U.S. 58	82, 83
<i>Winters v. New York</i> , 333 U.S. 507	53, 72, 81
<i>Yick Wo v. Hopkins</i> , 118 U.S. 356	101

Statutes:

18 U.S.C. 610 (§ 304 of the Taft-Hartley Act)	4-5
18 U.S.C. 3731 (The Criminal Appeals Act)	2, 3, 14
18 U.S.C. §§ 241, 242; 42 U.S.C. §§ 1981, 1983	83
Smith-Connally Act, 57 Stat. 168, 50 U.S.C. 1509 (1940 ed.)	4, 92, 101

Miscellaneous:

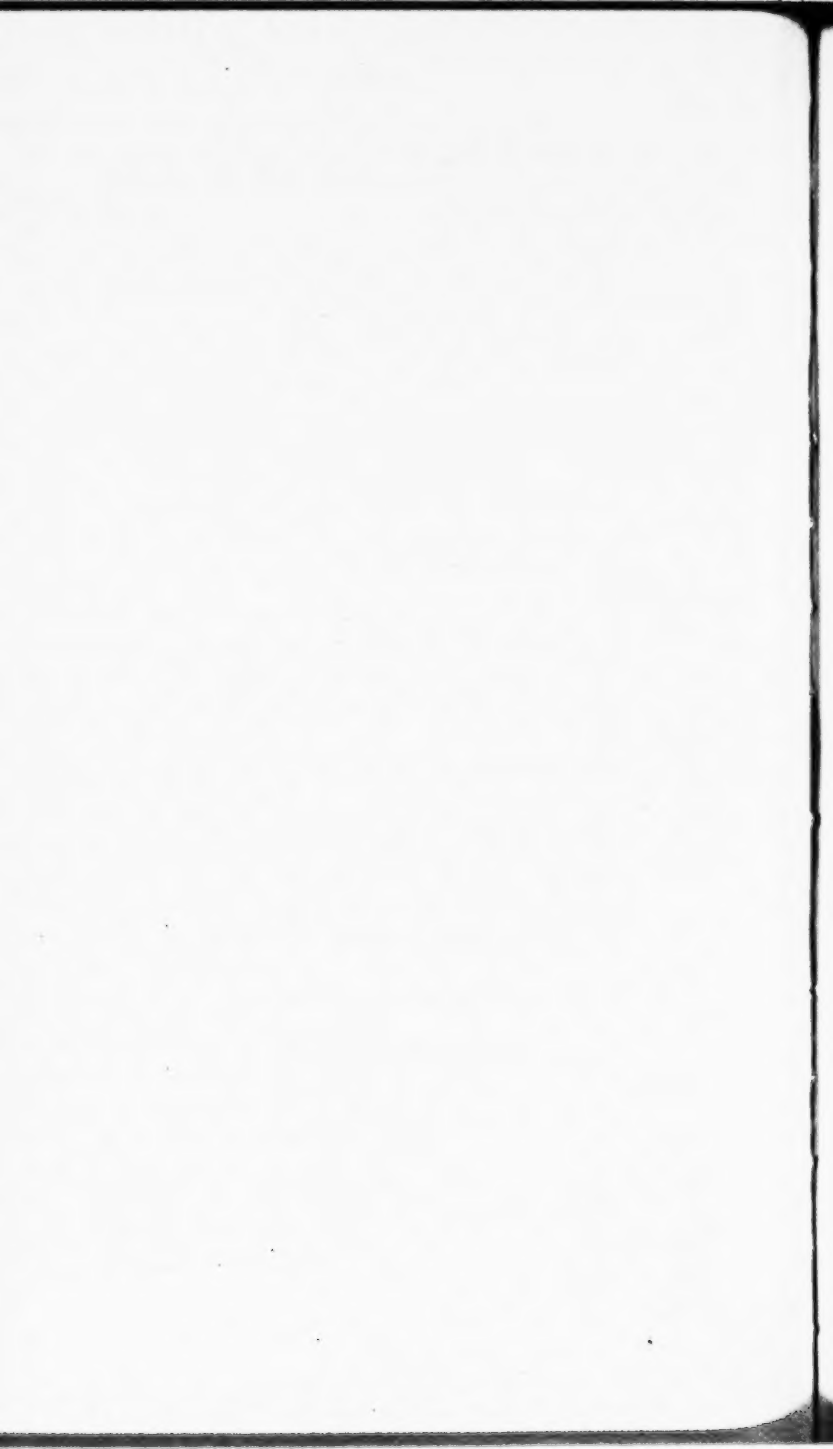
<i>A Free and Responsible Press, A Report of the Commission on Freedom of the Press</i> (1947)	93
"Are the People Listening?", address by Clem Whitaker, Director, National Education Campaign, American Medical Association, delivered before	

	Page
the second annual Southern Public Relations Conference, Tulane University, May 8, 1951	96
Brief for the Congress of Industrial Organizations, <i>United States v. CIO</i> , No. 695, Oct. Term, 1947, p. 56	32, 38
Brief for the United States, <i>United States v. CIO</i> , No. 695, Oct. Term, 1947, pp. 44-46	32, 38
Brief on Behalf of American Federation of Labor, Amicus Curiae, <i>United States v. CIO</i> , pp. 1-2	32
Chang, <i>Labor Political Action and the Taft-Hartley Act</i> , 33 Nebraska Law Review 554	102
Chase, <i>Sound and Fury</i> , 128-129 (1942)	93
Daugherty & Parrish, <i>The Labor Problems of American Society</i> , 231, 239 (1952)	102
David, <i>100 Years of Labor in Politics</i> , The House of Labor, 90	102
Dulles, Foster Rhea, <i>Labor in America</i> , Ch. III	55, 102
IV Elliot, <i>Debates in the Several State Conventions on the Adoption of the Federal Constitution</i> (p. 561)	49
II Elliot, <i>Debates at the Federal Convention</i> , pp. 136 et seq., 160 et seq., 223 et seq.	83
Federal Rules of Criminal Procedure, Rule 7(c)	24
Federalist papers, Nos. 47, 52, 53, 55, 57	83
<i>Freedom in the Opinion Industries</i> in Lerner, <i>Ideas Are Weapons</i> (1939)	93
Gable, <i>NAM—Influential Lobby or Kiss of Death?</i> , 15 Journal of Politics 254 (1953)	94
Hays, <i>Civil Discussion Over the Air</i> , 213 Annals 37, 44 (1941)	93
Hearings before House Committee on the Election of Presidents, March 12, 1906, p. 40	49
Hearings of a Subcommittee of the Committee on Education and Labor of the House of Representatives on H.R. 2032, 81st Cong., 1st Sess.	103
Hearings Before the Subcommittee on Privileges and Elections of the Committee on Rules and Administration, United States Senate, 84th Cong., 1st Sess. on S. 636, pp. 201, 202-3, 209-10, 236, 242	30, 42

	Page
Heller, <i>The Sixth Amendment</i> (1951), p. 104	25
House Report No. 3137, 81st Cong., 2d Sess., " <i>Expenditures by Corporations to Influence Legislation</i> "	93
Hyde & Wolff, <i>The American Medical Association: Power, Purpose and Politics in Organized Medicine</i> , 63 Yale Law Journal 938, 948-953, 1012-1017, 95, 96, 97	96
144 JAMA 1269 (1950)	96
Kallenbach, <i>The Taft-Hartley Act and Union Political Contributions and Expenditures</i> , 33 Minnesota Law Review 1	102
Keenan, <i>The AFL-LLPE and How It Works</i> , The House of Labor, pp. 113, 115	52
Key, <i>Southern Politics</i> , 480 (1949)	88
Laswell, <i>Democracy Through Public Opinion</i> (1941)	93
Lewis, <i>New Power at the Polls</i> , January 1951 issue of " <i>Medical Economics</i> ", p. 73	96
McKean, <i>Party & Pressure Politics</i> , 352-3 (1949)	88
" <i>Medical Economics</i> ", December 1950 issue, p. 57, editorial	96
Memorandum for the United States, <i>United States v. Jones</i> , No. 556, Oct. Term 1952, pp. 3-4	29
Merriam & Gosnell, <i>The American Party System</i> , 406-7 (1949)	88
Nation's Business, September, 1950, p. 2	96
New York Times, Dec. 2, 1948, p. 32 col. 2; id., Dec. 3, 1948, p. 20, col. 1; Nov. 26, 1950; Oct. 15, 1952, p. 21, Advertisement by Standard Steel Spring Company, 88, 96	88, 96
Norton-Taylor, Duncan, <i>How to Give Money to Politicians</i> , <i>Fortune</i> , May 1956, p. 113, 238	88
"Organized Labor's Program to ORGANIZE the Legislative Halls", National Association of Manufacturers, p. 13	95
Overacker, <i>Presidential Campaign Funds</i> , 13-16, 69 (1946)	88, 92, 102

	Page
Overacker, <i>Presidential Campaign Funds, 1944</i> , in 39 <i>American Political Science Review</i> 899 (1945) .	62
239 <i>Printers Ink</i> No. 2, p. 17 (Apr. 11, 1952)	88
<i>Regulation of Labor's Political Contributions and Expenditures: The British and American Experi- ence</i> , 19 <i>University of Chicago Law Review</i> 371, n. 28, n. 106	62
<i>Report of the Special Committee on Campaign Ex- penditures, 1946, to the House of Representatives (H. Rep. No. 2739, 79th Cong., 2nd Sess.)</i>	61
<i>Report of the Special Committee to Investigate Cam- paign Expenditures, House of Representatives, 1944 (H. Rep. 2093, 78th Cong., 2d Sess.)</i>	61
<i>Report of Special Committee to Investigate Presiden- tial, Vice-Presidential and Senatorial Campaign Expenditures, 1944 (S. Rep. No. 101, 79th Cong., 1st Sess.)</i>	61, 62, 92
<i>Report of the Special Committee to Investigate Senatorial Campaign Expenditures, 1946 (S. Rep. No. 1, Pt. 2, 80th Cong., 1st Sess.)</i>	61
Reynolds, <i>Labor Elections and Labor Relations</i> , 99-104 (1940)	102
S. 249, 81st Cong., 1st Sess., 1949, as amended and adopted June 30, 1949	39
Senate Report No. 47, 79th Cong., 1st Sess.	92
<i>Sixteenth Annual Report of the National Labor Rela- tions Board for the Fiscal Year Ended June 30, 1951, Appendix B, Table 9A, p. 301, "Results of union-shop authorization polls conducted Aug. 22, 1947-Oct. 22, 1951"</i>	69
Stewart, <i>Radio Commentators and Free Speech</i> , 14 <i>Common Sense</i> 32 (Aug., 1945)	93
Tanenhous, <i>Organized Labor's Political Spending</i> , 16 <i>Journal of Politics</i> , 441, 443-5	102, 103
Tussman & tenBroek, <i>The Equal Protection of the Laws</i> , 37 <i>California Law Review</i> 341	91
<i>United Automobile Worker</i> , August, 1956	70
Ware, Norman J., <i>The Labor Movement in the United States, 1860-1895</i> , Chap. 17	102
Cong. Q. Almanac 763 (1950)	93

	Page
Cong. Q Reports, 1948, p. 268	94
9 Cong. Q. News Features, pp. 421, 422, 424-425, 565, 578-9, 612-614 (1951)	92, 93, 96
89 Cong. Rec. 5721, 6503	92
90 Cong. Rec. 1643	92
93 Cong. Rec. 5015-5017, 6436-6440 ..	33, 38, 39, 52, 72, 94, 103



IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1956

No. 44

UNITED STATES OF AMERICA,
Appellant,

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO), *Appellee*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN

BRIEF FOR APPELLEE

Opinion Below

The opinion of the district court is reported at 138 F. Supp. 53 and may be found at pp. 36-44 of the record.

Jurisdiction

On February 8, 1956, the District Court for the Eastern District of Michigan entered an order dismissing the indict-

ment on the ground that it did not charge an offense under 18 U.S.C. 610 (R. 45-46). On February 20, 1956, a notice of appeal to this Court was filed in the district court (R. 46-47), and on April 23, 1956, this Court entered an order noting probable jurisdiction (R. 47). 351 U.S. 904. The Government relies on the Criminal Appeals Act (18 U.S.C. 3731) as the basis for the jurisdiction of this Court.¹

Questions Presented

1. Whether the Government may, on a direct appeal under the Criminal Appeals Act, urge upon this Court a construction of the indictment different from that adopted by the district court.

2. Whether an indictment interpreted by the district court as charging a labor union with payments for television broadcasts over a commercial television station "to inform its members and others of the position of the Union on those seeking certain federal offices" charges the offense of making an "expenditure" in connection with a federal election within the meaning of 18 U.S.C. 610.

3. Whether, if such an expenditure is prohibited by 18 U.S.C. 610, the statute violates the provisions of the Constitution of the United States in that the statute (i) abridges freedom of speech and of the press and the right peaceably to assemble and to petition; (ii) abridges the right to choose senators and representatives guaranteed by Article I, § 2 and the Seventeenth Amendment; (iii) creates an arbitrary and unlawful classification and discriminates against labor organizations in violation of the Fifth Amendment, and (iv) is vague and indefinite and fails to

¹ As will be seen (pp. 13-30, *infra*), the Government's effort to alter the district court's construction of the indictment raises questions beyond the jurisdiction of this Court on a direct appeal under the Criminal Appeals Act.

provide a reasonably ascertainable standard of guilt in violation of the Fifth and Sixth Amendments.

Statutes Involved

The Criminal Appeals Act (18 U.S.C. 3731) provides in relevant part:

An appeal may be taken by and on behalf of the United States from the district courts direct to the Supreme Court of the United States in all criminal cases in the following instances:

From a decision or judgment setting aside, or dismissing any indictment or information, or any count thereof, where such decision or judgment is based upon the invalidity or construction of the statute upon which the indictment or information is founded.

• • • • •

An appeal may be taken by and on behalf of the United States from the district courts to a court of appeals in all criminal cases, in the following instances:

From a decision or judgment setting aside, or dismissing any indictment or information, or any count thereof except where a direct appeal to the Supreme Court of the United States is provided by this section.

• • • • •

If an appeal shall be taken, pursuant to this section, to the Supreme Court of the United States which, in the opinion of that Court, should have been taken to a court of appeals, the Supreme Court shall remand the case to the court of appeals, which shall then have jurisdiction to hear and determine the same as if the appeal had been taken to that court in the first instance.

• • • • •

18 U.S.C. 610 provides:²

It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution *or expenditure* in connection with any election to any political office, *or in connection with any primary election or political convention or caucus held to select candidates for any political office*, or for any corporation whatever, *or any labor organization* to make a contribution *or expenditure* in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, *or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices*, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

Every corporation *or labor organization* which makes any contribution *or expenditure* in violation of this section shall be fined not more than \$5,000; and every officer or director of any corporation, *or officer of any labor organization*, who consents to any contribution or expenditure by the corporation *or labor organization*, as the case may be, * * * in violation of this section, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if the violation was willful, shall be fined not more than \$10,000 or imprisoned not more than two years, or both.

² The italicized portions of the statute were added in 1947 as Section 304 of the Taft-Hartley Act. This was the first time that Congress, which had banned corporate contributions as early as 1907, entered the field of expenditures. Congress had subjected labor unions to the ban against corporate contributions as a temporary measure in 1943 as part of the Smith-Connally Act, 57 Stat. 168, 50 U.S.C. 1509 (1940 ed.).

For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Statement

On July 20, 1955, appellee union was indicted (R. 2-6) on four counts, each alleging a separate violation of Section 610 of Title 18, which prohibits "contributions" and "expenditures" by labor unions in connection with federal elections. Each count alleges that appellee is a labor organization as defined in Section 610 and that primary (Count I) and general (Counts II, III and IV) elections were held in 1954 in the State of Michigan to select candidates for, and senators and representatives in the Congress of the United States. Each count further alleges that appellee expended a specified sum from its general treasury fund by paying that sum to Luckoff and Wayburn Productions, Detroit, Michigan, to defray the expenses of preparation for and telecasting of political television broadcasts sponsored by appellee over television station WJBR-TV. The indictment sets out that those television broadcasts, "urging and endorsing" the selection or election of certain persons to be candidates for or representatives or senators in the Congress of the United States, "included expressions of political advocacy, and were intended by defendant to influence the electorate generally" and "to affect the results" of the election.

Each count also alleges that the money for the expenditure came from the general fund of the union, consisting of union dues, and that the expenditure was not made from

voluntary political contributions or subscriptions of employee members of the union and was not paid for by advertising or sales.

On July 29, 1955, appellee pleaded not guilty (R. 15) and on October 31, 1955, appellee moved to dismiss the indictment on the following grounds (R. 18-19):

1. The provisions of Section 610 do not prohibit the payments set forth in the indictment.

2. The provisions of Section 610 abridge the freedom of speech and of the press, the right peaceably to assemble and the right of petition, in violation of the rights of appellee and its members under the First Amendment.

3. The provisions of Section 610 unlawfully abridge the right to choose senators and representatives in the Congress guaranteed by Article I, § 2 and the Seventeenth Amendment.

4. The provisions of Section 610 create an arbitrary and unlawful classification and discriminate against labor organizations in violation of the Fifth Amendment.

5. The provisions of Section 610 are arbitrary and capricious and deprive appellee and its members of liberty and property without due process of law in violation of the Fifth Amendment.

6. The statute is vague and indefinite and fails to provide a reasonably ascertainable standard of guilt in violation of the Fifth and Sixth Amendments.

7. The provisions of Section 610 invade the rights of appellee and its members protected by the Ninth and Tenth Amendments.

On February 3, 1956, after having received detailed briefs and reply briefs from both parties and after having heard summary oral argument (R. 20-35), District Judge Picard

rendered his opinion (R. 36-44). He construed the indictment as charging that appellee union paid for television programs "to inform its members and others of the position of the Union on those seeking certain federal offices" (R. 43) and, so construed, he held that "under the authorities the 'expenditures' charged in this indictment are not expenditures prohibited by the Act" (R. 44). After a thorough discussion of *United States v. CIO*, 335 U.S. 106, Judge Picard concluded, "As is our duty, we try to follow the law as laid down by our Supreme Court and there is no difficulty in doing so here. What the Supreme Court has said is not ambiguous to us" (R. 44).

On February 8, 1956, Judge Picard entered the order dismissing the indictment (R. 45-46).

On February 20, 1956, the Government filed its Notice of Appeal (R. 46-47) and on March 9, 1956, its Statement As to Jurisdiction.

Appellee filed a Motion to Affirm and the Government's opposition thereto included a Motion to Advance the cause for argument and decision at the October, 1955 term "in view of the importance of the question at this time."

On April 23, 1956, this Court noted probable jurisdiction (R. 47) and denied the Government's Motion to Advance.

Summary of Argument

I

The district court, with the concurrence of the parties, read the indictment as charging payments by appellee union to a commercial television station "to inform its members and others of the position of the Union on those seeking certain federal offices" (R. 43). Since on this appeal "this Court must accept the construction given to the indictment by the District Court" (*United States v. Borden Co.*, 308 U. S. 188, 193), the question presented here is whether the

“expenditure” prohibition of Section 610 applies to union payments for television time expressing the “position of the Union on those seeking federal offices.” Nevertheless, the Government argues, despite the interpretation below, that the indictment permits proof of flagrant electioneering and sloganeering by appellee intended to contribute to a campaign for federal office. Actually, if the indictment did permit such proof and did run the gamut from the mere expression of union views to electioneering and sloganeering intended to contribute to a campaign, it would fail for want of material elements of the crime and for vagueness.

The Government, having taken a direct appeal to this Court at a time when it sought an early authoritative decision on the matters in issue, cannot now obtain a review of the hypothetical set of facts it urges upon this Court, nor can it, having appealed to this Court, now bring about a remand to the United States Court of Appeals for the Sixth Circuit by raising questions of interpretation beyond the authority of this Court. Nor should this Court, on its own motion, undertake to remand the case to the Court of Appeals. The interpretation of the indictment which the Government now urges upon this Court was not urged upon the district court and, therefore, could not be considered by the Court of Appeals. In addition, the construction urged by the Government will only result in the invalidation and dismissal of the indictment. The Government having concurred below in the construction of the indictment offered by appellee and having taken a direct appeal to this Court, appellee ought not now be forced into another forum for the consideration of matters of interpretation of the indictment not raised in the district court and, therefore, not properly before any appellate forum.

II

Payments by a labor union for commercial television broadcasts to inform its members and others of the position

of the union on Congressional candidates cannot be deemed expenditures prohibited by Section 610 in the light of this Court's decision in *United States v. CIO*, 335 U.S. 106. The court below could find no distinction in the statute between payments to make possible the expression of the union's views in a union newspaper (as in the *CIO* case) and payments to make possible the expression of the union's views over a commercial television station (as here). Certainly there is no statutory language on which such a distinction could be predicated. Equally clearly, the legislative history offers no ground for any such distinction; indeed the discussion on the floor of the Senate evidenced a concern with the expression of union views through a union newspaper at least as great as with the expression of a union's views through commercial channels. Furthermore, the policy of interpreting the statute in such a way as to avoid constitutional questions applies with at least equal force to the indictment now before the Court. Finally, every practical consideration of American life calls for the rejection of a line which permits communication within the union's own membership but prevents communication between the union and the general community of which it is a part.

The court below was not the first court that could find no legal distinction in the difference between the expression of a union's views in a union newspaper and the expression of its views over a commercial broadcast station. The Court of Appeals for the Second Circuit rejected this distinction back in 1949. *United States v. Painters Local Union*, 172 F. 2d 854 (CA 2, 1949). In the years since the *CIO* and *Painters Local* cases, no prosecutions were brought until the one at bar because, in the words of Assistant Attorney General Olney, the Justices of this Court "expressed so many doubts about it [the statute], all of them did, that it made it almost impossible, certainly impractical, to prosecute under it."

III

If the statute is construed to prohibit a labor organization from making its views known to its members and the public through commercial media of communication, it abridges the freedom of speech, of the press, of assembly and of petition of appellee and its members in violation of the First Amendment to the Constitution of the United States. Indeed, so construed, Section 610 impairs the rights of appellee and its members under the First Amendment at the very point where those rights are most zealously guarded by the Constitution and the courts in the interest of the fullest participation of all citizens in our democratic government and the continued vigor of the political processes upon which our free government depends.

The Government seeks to defend the statute as necessary to prevent undue influence upon federal elections by labor unions and to protect the dissenting minority of union members. But labor political expenditures run far below its proportionate share based on voting population and true respect for our fundamental democratic process would seem to require that labor union participation in political processes be encouraged rather than restricted. In so far as minority protection is concerned, the principle of majority rule is no less appropriate to decisions having to do with the expenditure of union funds in the political arena than to any other form of union activity. But an even simpler answer to the Government's attempted justification of Section 610 as a protection of the minority is that the statute applies whether or not there is in fact any minority at all. The statute applies even where the expenditures are made by unanimous decision of the union membership; it applies even where, though some members might have a different choice of candidates, all members support the union in implementing the majority decision; it applies in areas

where the union shop does not exist or where membership in the union is unrelated to the union shop; it applies, finally, even where the union allows dissenting members to contract out of the fund supporting the expression of union political views.

IV

Section 610 unlawfully abridges the right of appellee and its members to choose Congressional representatives, guaranteed by Article I, § 2, and the Seventeenth Amendment to the Constitution. This Court has recognized that the constitutional guarantees of the right to vote and to choose Congressional representatives are not empty phrases, but a guarantee of the right of "effective choice" (*United States v. Classic*, 313 U.S. 299, 314). The constitutional right of qualified voters to make an "effective choice" of Congressional representatives requires more than mere protection of the mechanism of the casting and counting of ballots; it requires that very group political action which Section 610 prohibits. Congressional power to guard the exercise of the civil rights of voters cannot be converted into Congressional power substantially to destroy or impair them. Yet this is the immediate effect of the statute on the freedom of working men and women to protect their interests through union political action; it deprives union members of their primary organized means for the protection of their interests in many of the most important political decisions of the day.

V

The prohibition of union expenditures in connection with a federal election is an arbitrary discrimination depriving unions and their members of liberty without the due process of law guaranteed by the Fifth Amendment. With the sole exception of the prohibition on labor union election expenditures, Congress has never enjoined associations of individ-

nals formed to promote common interests from expending funds in federal elections. Associations of farmers, doctors and lawyers, of employer, manufacturer and business groups, of veterans, fraternal and community groups, are all left free to spend general funds in federal elections. The statute singles out unions, while all other groups of individuals are left unfettered. By so leaving all other groups unrestricted, Congress has aggravated the existing imbalance in the expenditures of other groups as against the far smaller expenditures by labor unions.

Nor is the discrimination against labor unions offset by the ban on corporate election expenditures. The ban on corporate expenditures is not and cannot be enforced. Furthermore, corporations are state-created entities deriving funds from widespread ownership and business interests; they are not associations of individuals formed to promote common group interests through social, educational, political and other means.

VI

Section 610 is vague and indefinite and fails to provide a reasonably ascertainable standard of guilt in violation of the Fifth and Sixth Amendments to the Constitution. For this Court to draw a line between a union publication and a commercial means of communication would raise far more questions of interpretation for the union official attempting to comply with the statute than it would settle. If the union is forbidden to use commercial channels of communication, could it distribute its union publication beyond the union membership? Could it put extra copies in conspicuous public places for the public to pick up and carry home? Could it send a copy of its publication to every resident in a particular district by house-to-house distribution? Could it do a dozen other things in this same field? Furthermore, would the interpretation of the statute to prohibit payments for a commercial television broadcast make illegal all payments to make the union's views known to its membership

and the public other than through the publication of a union newspaper? Would it, for example, cover overhead, salaries, and travel in preparing and delivering speeches or issuing news releases? Furthermore, is the time when the expenditures are made in relation to the election significant or determinative? Would the expense of preparing and publishing voting records of individuals just after Congress adjourned violate Section 610? If not, would there be a violation if these voting records were distributed during a campaign? There are hundreds of such questions and no answers in the statute. It is hard to think of a statute which raises more questions for one genuinely trying to comply and whose language provides fewer answers.

VII

We submit appellee need only convince this Court of the seriousness of the constitutional issues to be faced if Section 610 is not given the restrictive interpretation laid down by the precedents to date. The review of the constitutional issues provided hereinafter demonstrates the wisdom of these precedents in restricting the statute and avoiding grave constitutional issues which lie at the very heart of our democratic society.

Argument

I

The Question Before This Court Is the Sufficiency of the Indictment as Construed by the District Court Rather Than the Sufficiency of the Indictment as Interpreted by the Government for the First Time in This Court

1. *Introduction*

It is, of course, elementary that a direct appeal to this Court by the Government from the dismissal of an indict-

ment based on a ruling as to the invalidity or construction of a Federal statute does not open up the whole case. 18 U.S.C. 3731; *United States v. Borden Co.*, 308 U.S. 188, 193. The Government may not, in arguing that a statute prohibits the acts pleaded in an indictment, disregard the construction of the indictment by the district court and seek to sustain its validity by construing it more broadly than did the district court. Nevertheless, this is exactly what the Government is attempting in the instant case.

The Government, as we shall show, is arguing here that 18 U.S.C. 610 applies to certain types of union television broadcasts having a specific political content and intent, but disregards the fact that the district court's construction of the indictment gives it a much more limited scope. The Government is thus presenting to this Court a merely hypothetical case—the applicability of the statute to an indictment other than the one at bar. Since it is only the applicability of the statute to the indictment as construed below that is properly presented to this Court on a direct appeal, the construction of the *indictment* by the district court must of necessity delimit the question of its construction of the *statute*. We address ourselves initially, therefore, to the issue of just what facts the district court held the indictment to allege. It is only those facts, not the facts which the Government now seeks to present, which the district court held to be outside the scope of 18 U.S.C. 610.

2. *The District Court's Construction of the Indictment*

The indictment charges appellee with payments for union-sponsored commercial television broadcasts "urging and endorsing" the selection and election of Congressional candidates. The content of the television programs in question is omitted from the indictment.

Appellee read the indictment and so indicated in its briefs in the court below as charging the union with making pay-

ments "to make known to its members and to the public its position on elections of significance to the union and its members" or, put another way, as charging the union with payments to present "its views on candidates to its members and the public through normal channels of communication" (*Brief in Support of Defendant's Motion to Dismiss the Indictment*, p. 27; see also p. 3). In the same vein, appellee introduced its argument as to the constitutionality of Section 610 in its brief below with the statement:

"Before the Court reaches this difficult constitutional issue involving the statute's effect on First Amendment freedoms, Section 610 must be construed to include the expenditures *described in the indictment*. So construed over defendant's objection . . . the statute prohibits disbursements of money by labor unions for the purpose of disseminating to members and to the public *their views about candidates and elections through public media of information.*" *Brief in support of Defendant's Motion to Dismiss*, p. 28. See also *Reply Brief of Defendant in Support of Motion to Dismiss the Indictment*, pp. 2, 4, 6. (Emphasis added.)

At no time, either in its lengthy briefs in the district court or in the oral hearing before the court, did the Government assert that appellee's construction of the indictment failed to accord with its own construction. On the contrary, the Government based its entire argument in the court below on the view that Congress constitutionally could and did prohibit *all* political broadcasts by labor unions over commercial radio and television stations.³ There was never any suggestion in the court below that the communication charged in the indictment went beyond the expression of

³ *Brief in Opposition to Defendant's Motion to Dismiss the Indictment*, pp. 40-48.

union views or that it was intended as a direct or indirect contribution to the campaign of any particular candidate.⁴ The Government was willing in the court below to test the scope and validity of the statute as applied to any and all payments for commercially broadcast endorsements of candidates by a labor union.

Indeed the Government appears to have concurred in appellee's construction of the indictment below. In a lengthy comparison of the indictment herein with that in the *CIO* case, the Government assumed the similarity in content and intent of the communications in the two cases; its distinction of the *CIO* case was predicated entirely upon the difference between a payment for a "house organ" and a payment for a commercial television broadcast to the general public.⁵

⁴ In this latter connection, it should be noted that the indictment does not charge a "contribution," and government counsel, in oral argument in the court below, expressly waived any such contention. The following colloquy appears at page 24 of the record:

"The Court: . . . Now, your position is that they just merely wanted to make sure that contributions which you do not question,— and neither side claims that this is a contribution within the meaning of the statute, do you?

"Mr. Woods: No."

Mr. Woods is Chief Assistant United States Attorney and represented the Government before Judge Picard.

⁵ "The Court in the instant case has before it an entirely different indictment than that in the *CIO* case. No "house organ" is here involved. This is not a charge of spending union funds for publishing or distributing a periodical. It is a charge of making an expenditure for a political broadcast. The instant indictment clearly alleges that the money expended on the telecasts came from the Union's general treasury fund, made up of membership dues, and not from any other source, and avers that no portion of the general treasury fund included any contributions by members specifically earmarked for political purposes; that no subscription of members was involved; that the telecasts were beamed on a commercial television station in which the defendant had no financial interest and were intended by defendant to reach and did reach the general public (as distinguished from reaching its members, as in the *CIO* case). Moreover, while the Court in the *CIO* case held that Congress did not intend to cover a publication such as was involved in the *CIO* case, the legislative history of Section 610 reflects, *infra*, that the limitation on expendi-

Furthermore, the Government conceded below that its indictment put in issue the right of labor unions to express their views publicly on candidates, but argued that this First Amendment restriction was warranted. It sought to justify "a prohibition against expenditures for political purposes [which] *prohibits expression of opinion*" and addressed its arguments to the question whether preventing "the organization from *expressing its own opinions for or against a candidate*," by prohibiting expenditures therefor, could be squared with the First Amendment (*Brief in Opposition to Defendant's Motion to Dismiss*, p. 40). (Emphasis added.)

Thus it appears to have been the clear understanding of both sides below that the indictment charged the union with no more than payments for commercial television programs to express its view on candidates for federal office; there was no slightest suggestion of the contention now made by the Government that the indictment charged flagrant electioneering or sloganeering or a contribution to any candidate. The district judge at the oral argument indicated a similar view to that of the parties below as to what was charged. He dwelled at length on the question whether newspaper editorials favoring a candidate were included within the prohibitions of the Act and indicated that, in his view, the indictment charged merely public editorializing by a labor union. Thus, the district judge said to counsel for appellee, "it is your position . . . that if it is legal for a newspaper to make those kind of comments, editorially, in a political way, and to stop them [unions] from going on the air or television and doing the same thing, that that is unconstitutional . . ." (R. 28).

tures for political purposes was intended to apply to the use of radio (and by a parity of reasoning to the then as yet undeveloped television) . . . " *Brief in Opposition to Defendant's Motion to Dismiss the Indictment*, p. 4.

The opinion of the district court adopts this same view of the indictment. The district judge referred to the *CIO* case wherein a labor union had editorialized in favor of a candidate (an activity described by this Court (335 U.S. at 123) as "expressing views on candidates") and held that the "violations charged" in that case were "the same charges as here" (R. 42). The judge went on, accepting all that had been conceded by the parties beforehand, to construe the indictment as charging payments for a broadcast intended to express the views of the union and without reference to flagrant electioneering or sloganeering in the content of the program or an intent by the union to contribute to a candidate. He said:

"According to the authorities the Union was not making an expenditure on behalf of a political candidate. It desired to inform its members and others of the position of the Union on those seeking certain federal offices. It was exercising the right of free speech. The question then might present itself as to whether or not what the Union did was in fact 'make a contribution.' This might be important if the Union were charged with 'making a contribution.' It is not" (R. 43).⁶

⁶ The Government states in its brief in this Court (p. 16) that the quoted statement "does nothing to narrow the effect of the decision. Any political broadcast under the auspices of a union does, in the words of the district court, state the position of the union. Even spot announcements of the sort already suggested—'Vote for Mr. X, the union's friend'—perform that function." But it is clear that the district court's characterization of the commercial television program as one "to inform its members and others of the position of the Union" and his specific equation of the indictment here with that in the *CIO* case and with that of newspaper editorializing, did narrow the effect of the decision to exclude mere sloganeering. It seems doubtful that repeated spot announcements, "Vote for Mr. X, the union's friend," could ever properly be characterized as a statement "of the position of the Union on those seeking certain federal offices"; but it certainly could not constitute the type of statement of position which the judge construed the indictment to charge. Furthermore, even if repeated sloganeering "Vote for Mr. X,

Further evidence of the district court's construction of the indictment appears from the part of the opinion analogizing the expression of views through newspaper editorials to the charges in the instant case. The court expressly stated that "to interpret this statute otherwise than has been done, is to jeopardize . . . the right of every newspaper to print any political editorial during a campaign in which federal officers are elected, advocating one adversary over another" (R. 43).

Both explicitly and implicitly the district court's opinion construes the indictment as alleging expenditures for the purpose of a public expression of the union's political views. The decision leaves no room for an expansive construction which would permit proof that the content of the broadcast was flagrant electioneering or sloganeering intended as a contribution to a candidate's campaign. The indictment having failed to allege, and the Government having failed to suggest, any ulterior intent or sloganeering content to the broadcast in question, the district court construed the indictment to allege only what it could reasonably be interpreted as charging—that the union made payments for commercial television broadcasts to state its position with respect to candidates for federal office.

3. The District Court's Construction of the Indictment Is Not Subject to Challenge on Direct Appeal

The district court's construction of the *indictment*, as set out above, is not open to challenge by the Government here,

the union's friend", could be deemed to be a statement of position, the Government's argument still breaks down, for the district court's holding that the type of statement of position, such as is found in the *CIO* case or in newspaper editorials, was not prohibited by the statute was not a holding that all statements of position, no matter how flagrant the electioneering or what their intent, are outside the prohibitions of the statute. No allegations in the indictment, either on its face or as construed, required the district court to consider such remote possibilities.

for its direct appeal is only from the district court's construction of the statute. *United States v. Borden Co.*, 308 U. S. 188; *United States v. Keitel*, 211 U. S. 370. The only question properly presented on direct appeal is the validity or applicability of the statute to facts alleged in the indictment as construed by the district court. *United States v. South-Eastern Underwriters Association*, 322 U. S. 533, 537-8; *United States v. Jones*, 345 U. S. 377; *United States v. Hastings*, 296 U. S. 188. "This Court must accept the construction given to the indictment by the District Court as that is a matter we are not authorized to review." *United States v. Borden Co.*, 308 U. S. at 193. On this appeal, therefore, the question presented is whether the "expenditure" prohibition of 18 U.S.C. 610 applies to union payments for television time where the union "desired to inform its members and others of the position of the Union on those seeking certain federal offices."⁷

4. *The Government Asserts Its Right to Prove Matters Excluded by the District Court's Construction of the Indictment*

Despite the rule to the contrary, the Government disputes and disregards the district court's construction of the indictment. Never before having suggested what it now suggests as to the intent and content of the broadcasts in question, the Government states in this Court that "the District Court failed to note that the allegations of this indictment would cover the latter [flagrant electioneering and sloganeering] type of broadcast" (*Brief in Opposition*

⁷ All apart from the consideration that the Government is bound by the district court's construction of the indictment on a direct appeal under the Criminal Appeals Act, a serious question arises as to the right of the Government to raise the argument of "flagrant electioneering" and intent to contribute for the first time on appeal. See *United States v. Classic*, 313 U.S. 299, 329; n. 16, p. 29, *infra*.

to *Appellee's Motion to Affirm*, p. 3). In its brief on the merits (p. 19) the Government states that "the court below *failed to note* that the specific facts on which the CIO decision rested appeared from the face of the indictment in that case. That decision cannot be automatically applied to this indictment where no equivalent specific facts are alleged. The indictment, as written, must be tested against the statute . . ." (Emphasis added.) Under cover of the words "failed to note", the Government thus summarily disposes of the construction of the indictment by the district court and proceeds to assert that it might have proven various additional matters under the indictment. The Government suggests that the indictment permits proof that the broadcasts in question were nothing but a repetition of a "vote for X" slogan (*Brief*, p. 15)⁸ and that the broadcasts were for the "special purpose" (*Brief*, p. 23) of "actively electioneering on behalf of a particular candidate" (*Brief*, p. 23) or were "out-and-out" (*Brief*, p. 15), "direct" (*Brief*, p. 18), "active" (*Brief*, p. 18) and "flagrant" (*Brief in Opposition to Motion to Affirm*, p. 2) electioneering, constituting a "valuable subsidy" (*Brief*, p. 17) which "differs but little from a direct contribution" (*Brief*, p. 17) and is "almost a direct contribution" (*Brief*, p. 7.) It is difficult to conceive of a construction departing more radically from an expression of the union's views "to inform" union men and the public of "the position of the union on those seeking federal offices."

⁸ We are somewhat surprised at the Government's action in raising in this Court the issue of repeated sloganeering such as "Vote for Mr. X, the union's friend." The Government did not suggest to the district court, before whom it would be required to make its proof if the case went to trial, that the Union's action had consisted of such sloganeering. Whether it refrained from doing so because it did not want to suggest to the court below more than it could prove, we do not know. At any rate we presume it is clear to this Court that this suggestion by the Government is purely hypothetical and not intended in any way as a description of the broadcasts actually involved in this case.

5. *The Government's Present Construction of the Indictment Would Render It Invalid*

The Government does not contend that the indictment specifically alleges flagrant electioneering and sloganeering intended to contribute to a campaign for federal office. It apparently concedes that the minimum proof necessary under the indictment would be no more than the district court's interpretation of the indictment as charging payments for the broadcast of an expression of union views. *Brief*, p. 19. What the Government seems to be saying is that, under the indictment, it may prove either payments for commercially sponsored programs expressing the union's views, by statements such as are found in the *CIO* case or in newspaper editorials, or it may prove flagrant electioneering intended to contribute to a campaign. As will be seen, an indictment construed in any such broad and general way would be invalid for failure to allege material elements of the crime and for vagueness. It is these considerations which would have made impossible the construction of the indictment by the district court which the Government now offers here for the first time.

(i) Admitting the "general nature of . . . allegations" in the indictment (*Brief*, p. 15), the Government states that the indictment "would plainly permit proof" of "active direct electioneering" (*Brief*, p. 18); that "the indictment could just as well apply" (*Brief*, p. 19) to one type of broadcast (as in the *CIO* case) as to the other (flagrant electioneering); that "no equivalent specific facts are alleged [as in the *CIO* case]" (*Brief*, p. 19); and "there is nothing on the face of this indictment which describes the character of the broadcast" (*Brief*, p. 5-6). It therefore suggests that "whether the financing of a particular broadcast is in fact an 'expenditure' under the statute must be determined

on the basis of the proof to be developed at a trial" (*Brief*, p. 23).

Thus the Government asserts that the indictment, because of its generality, *may include either legal or prohibited conduct*, that the indictment need not furnish a criteria of guilt nor state the material facts which make for criminality, and, finally, that it is enough if the material facts which make for criminality are "determined on the basis of the proof to be developed at a trial."

A moment's examination of these contentions shows their frailty. The district judge could not have construed the indictment so broadly that either legal or illegal conduct might have been shown within its confines, depending on the proof elicited at trial. An indictment which is consistent with innocence or guilt is defective, for an indictment must assert guilt rather than the mere possibility of guilt. *United States v. Cruikshank*, 92 U.S. 542; *United States v. Carll*, 105 U.S. 611; *Blitz v. United States*, 153 U.S. 308, 313-15. Every material element of an offense must be alleged, and if all that is alleged may be proven and yet the accused may still be innocent, then a material allegation has been omitted. *United States v. Cruikshank*, *supra*; *United States v. Carll*, *supra*; *Blitz v. United States*, *supra*.⁹

⁹ Thus the Government's concession that the indictment "could just as well apply" (*Brief*, p. 19) to the expression of union views as to an electioneering subsidy to a candidate is fatal. Such an indictment is not inconsistent with innocence. It leaves open "the widest conceivable inquiry, the scope of which no one can foresee and the result of which no one can foreshadow or adequately guard against." *United States v. L. Cohen Grocery Co.*, 255 U.S. 81, 89.

As stated by the court in *United States v. Metzendorf*, 252 Fed. 933, 937 (D.C. Mont. 1918):

"Statutory language is not sufficient in cases where, as here, it may apply to innocent as well as to guilty acts. The indictment must add to the statutory words enough to directly and positively charge the offense denounced by the statute, so that, if all be proven, the defendant cannot be innocent. Otherwise, the presumption of innocence requires construction favorable to the accused."

The accused is not required to wait until the Government presents its proof to be informed in what respect his conduct has been criminal; otherwise an indictment would fail to advise the accused of the nature of the offense sufficiently to enable him to prepare his defense. *United States v. Cruikshank, supra* at 557-9. In other words, so that the accused may prepare his defense and so that the judge may determine whether the acts alleged will necessarily sustain a conviction,¹⁰ indictments must assert *all* the material facts upon which criminality depends. *United States v. Debrow, 346 U.S. 374; United States v. Cruikshank, supra; United States v. Hess, 124 U.S. 483.*¹¹ What the Government expressly asserts it may do under this indictment, the foregoing time-tested rules expressly forbid. If the criminality of a union television broadcast depends on either the content of the broadcast or the intent to contribute to a candidate,¹² these critical factors must be *alleged*.¹³ Yet the Government

A succinct statement of the rule appears in *United States v. Goldberg, 123 F. Supp. 385, 388 (D.C. Minn. 1954)* where the court says that an indictment "is not sufficient if by its generality it may embrace acts which it was not the intent of the statute to punish."

¹⁰ "In short, I cannot tell from the indictments whether a crime has been committed—even if all the facts alleged are proved at trial. This alone renders the indictments insufficient." *United States v. Johnson, 53 F. Supp. 167, 171 (D.C. Del. 1943); Cf. Fontana v. United States, 262 Fed. 283, 288 (C.C. 8, 1919).*

¹¹ Rule 7(c) of the Federal Rules of Criminal Procedure has in no way altered this requirement. See *United States v. Debrow, supra*. While this rule requires that an indictment "set forth without unnecessary embroidery the essential facts constituting the offense . . . an allegation for lack of which the prosecution must evidently and as a matter of law fail cannot be regarded as superfluous." *United States v. Lamont, — F. 2d — (CA 2) decided August 14, 1956.*

¹² "Where the intent is a material ingredient of the crime it is necessary to be averred." *Evans v. United States, 153 U.S. 584, 594; United States v. Cruikshank, supra; United States v. Britton, 107 U.S. 655, 666-68; United States v. Corbett, 215 U.S. 233, 243.*

¹³ The accused must receive sufficient information to enable him to reasonably understand, not only the nature of the offense, but the particular act or acts touching which he must be prepared with his proof; and when his liberty, and perhaps his life, are at stake, he is not to be

argues that the electioneering and sloganeering content and the intent to contribute to a candidate, matters not alleged in the indictment, are the critical factors, distinguishable from merely the expression of union views, which make for criminality.

(ii) An indictment which requires proof of nothing more than the expression of union views but which also permits proof of flagrant electioneering intended to contribute to a candidate, is also unconstitutionally vague. This Court has held that, like the criminal statutes under which they are drawn, indictments must establish the test by which permissible conduct is differentiated from the forbidden. *United States v. L. Cohen Grocery Co.*, 255 U.S. 81, 89-92; *Weeds, Inc. v. United States*, 255 U.S. 109.¹⁴ Criminal indictments, like criminal statutes, must prescribe a determinable standard of guilt. *United States v. L. Cohen Grocery Co.*, *supra*; cf. *United States v. Cruikshank*, *supra*. Under the Government's view of the indictment, it runs the gamut from expression of union views to flagrant electioneering and sloganeering intended to contribute to a campaign. Yet no guide is ascertainable from this indictment to differentiate "expression of union views" from "flagrant electioneering" and similar acts. The Government's effort to make the controlling distinctions depend upon unalleged matters of intent and content to be shown at trial fails to satisfy the Sixth Amendment's requirement of specificity.

left so scantily informed as to cause him to rest his defense upon the hypothesis that he is charged with a certain act or series of acts, with the hazard of being surprised by proofs on the part of the prosecution of an entirely different act or series of acts, at least so far as such surprise can be avoided by reasonable particularity and fullness of description of the alleged offense." *United States v. Potter*, 56 Fed. 83, 89-90 (C.C.D. Mass. 1892).

¹⁴ Cf. *Screws v. United States*, 325 U.S. 91, 128 (concurring opinion); *United States v. Willard*, 8 F. Supp. 356 (D.C. Mich. 1934); *United States v. Sosnowitz*, 50 F. Supp. 586 (D.C. Conn. 1943); Heller, *The Sixth Amendment* (1951), p. 104.

(iii) But whether it be because of the vagueness rule or the rule requiring indictments to be inconsistent with innocence (and these are but two ways of highlighting the same defect), manifestly the district judge had no choice but to construe the indictment as he did. Even if the Government had argued below for its present view of the indictment, which it did not, these rules would have prevented the district judge from allowing the Government to take advantage of what it admits is the "general nature of these allegations" (*Brief*, p. 15)—allegations which fail to prescribe a standard of guilt or to indicate the content of the broadcast or the intent to contribute to a candidate. The district court could not, consistent with the rules of criminal pleading, have read into the indictment what it omits.

It is these reasons which would have compelled the district court to reject the Government's present contentions as to the scope of the indictment had they been presented to him. In the absence of such a presentation, however, the court properly assumed that the Government did not seek to prove what it did not allege in its indictment and held that an allegation of a public endorsement of a candidate charged merely a public statement of the union's position rather than a scheme to subsidize a candidate's campaign by a program of electioneering and sloganeering.¹⁵ And as we have seen, that court's construction is not open to challenge by the Government on this appeal.

6. *Appropriate Disposition of Government's Direct Appeal*

In drafting its indictment, the Government failed to set forth the contents of the allegedly prohibited commercial

¹⁵ Thus the Government's statement that the district court "failed to note" that the indictment would permit proof of these matters of intent and content (*Brief*, p. 19) is less than fair to the judge below. This district court failed to make specific reference to intent and content because the Government had never suggested these matters as issues in any way. His opinion does not merely overlook the possibility of proving such matters; it excludes that possibility. See *supra*, pp. 14-19.

television broadcasts and failed to set forth any specific intent on appellee's part to contribute directly or indirectly to the campaign of any candidate. Without suggesting any particular motivation for so general an indictment, it seems clear that the Government draftsmen did in fact prepare an indictment against appellee generally similar to the CIO indictment, except that the "house organ" in the indictment in the CIO case became a commercial television broadcast in this case. In other words, the draftsmen of the indictment against appellee were relying for their distinction of the CIO case upon the difference between a payment by a union to inform its membership of its position on candidates through a union newspaper and a payment by a union to inform its members and the public of its position on candidates through a commercial television channel.

As we have already seen (see pp. 14-17, *supra*), this was also the position of the Government before the court below. The Government's efforts to avoid the force of the CIO decision before the district court were not predicated upon any charges of electioneering or sloganeering or intent to contribute; rather the Government based its entire argument in the court below on the difference between expenditures for a union newspaper and for a commercial television broadcast. *Brief in Opposition to Defendant's Motion to Dismiss the Indictment*, p. 4. As already noted, the district court rejected the distinction urged by the Government below and followed the CIO case as a controlling precedent in ruling upon the indictment before it.

The Government then filed a direct appeal to this Court under the Criminal Appeals Act and sought to advance the case for argument prior to the summer recess "in view of the importance of the question at this time" (*Brief in Opposition to Appellee's Motion to Affirm and Appellant's Motion to Advance*, p. 9). No doubt the Government's understandable desire to obtain an authoritative decision prior

to the election induced it to take a direct appeal to this Court. Once here, however, the Government was faced with the not unlikely possibility that this Court would reject the distinction between a "house organ" and a commercial television broadcast and would apply the *CIO* case to the indictment at bar just as the court below had done and just as the United States Court of Appeals for the Second Circuit had done. *United States v. Painters Local Union*, 172 F.2d 854 (CA 2, 1949). Faced with this possibility, the Government for the first time sought to add new elements of differentiation to its present case—electioneering or sloganeering and the intent to contribute. In a word the Government seeks in this Court to shift its distinction of the *CIO* case from the means of communication to the content and intent of the communication. But this shift, as we have already seen, comes too late.

The Government, having taken a direct appeal to this Court, is bound by the construction of the indictment below. It may not, as it has sought to do in its brief, argue the issue of statutory construction and constitutionality upon the basis of its own interpretation of the indictment contrary to that of the lower court. Having taken its appeal to this Court at a time when it sought an early authoritative decision on the matters in issue, it cannot now obtain a review of the hypothetical set of facts it now urges upon this Court; nor can it, having appealed to this Court, now bring about a remand to the United States Court of Appeals for the Sixth Circuit by raising questions of interpretation beyond the authority of this Court to review. Nor should this Court, on its own motion, remand the case to the United States Court of Appeals for the Sixth Circuit, since the Court of Appeals will not be free to act upon the indictment as now construed by the Government. The interpretation of the indictment which the Government now urges upon this Court was not urged in the court below and, therefore, could not be considered by the Court of Ap-

peals.¹⁶ In addition, the construction urged by the Government will only result in the invalidation and dismissal of the indictment (see pp. 22-26, *supra*). The Government having concurred below in the construction of the indictment proffered by appellee and adopted by the district court and having taken a direct appeal to this Court, appellee ought not now be forced into another forum for the consideration of matters of interpretation of the indictment not raised in the district court and therefore not properly before any appellate forum.¹⁷ We respectfully urge

¹⁶ Appellant cannot change the nature and theory of the action or the pleadings from that urged in the trial court, *Virginia Railway Co. v. Mullens*, 271 U.S. 220, *cf. Perego v. Dodge*, 163 U.S. 160, for he cannot complain of an error which he invited by his action before the trial court. *New York Life Ins. Co. v. Calhoun*, 114 F. 2d 526, 543 (CA 8, 1940), *cert. denied* 311 U.S. 701; *Capella v. Zurich General Acc. Liability Ins. Co.*, 194 F. 2d 558 (CA 5, 1952); *Orenstein v. United States*, 191 F. 2d 184, 193 (CA 1, 1951); *Smails v. O'Malley*, 127 F. 2d 410 (CA 8, 1942). Likewise, appellate courts refuse to consider questions not brought to the attention of or passed upon by the trial court, including objections addressed to the form or sufficiency of indictments. *Breese v. United States*, 226 U.S. 1; *Holmgren v. United States*, 217 U.S. 509; *Pickett v. United States*, 216 U.S. 456. This is especially true where, as here, the error complained of was fostered by appellant's implied or expressed concurrence in the trial court's action. Thus a district court's construction of the pleadings, concurred in by the parties, cannot be questioned for the first time on appeal. *New York Life Ins. Co. v. Calhoun*, *supra*; *Harkin v. Brundage*, 13 F. 2d 617 (CA 7, 1926), *rev'd* for other reasons, 276 U.S. 36; *Houle v. Helena Gas & Electric Co.*, 31 F. 2d 671 (CA 9, 1929); *Meyer v. W. R. Grace & Co.*, 290 Fed. 785 (CA 7, 1923); *Martin v. Imbrie*, 262 Fed. 44 (CA 2, 1919); *cf. San Juan Light & T. Co. v. Requena*, 224 U.S. 89; *Missouri, K. & T. Ry. Co. v. Wilhoit*, 160 Fed. 440 (CA 8, 1908).

¹⁷ This Court has remanded where the Government has brought direct appeal "erroneously to this Court" (see *United States v. Wayne Pump Co.*, 317 U.S. 200, 209), and recently did so in *United States v. Jones*, 345 U.S. 377, where the Government conceded that its appeal "should have been taken to the Court of Appeals". *Memorandum for the United States*, pp. 3-4. But the statute's purpose of saving the Government's appeal where it erroneously believes a district court's decision to be based solely on the construction or invalidity of a statute (*Wayne Pump, supra*) has no application here. The Government has not chosen the wrong tribunal; it errs only in its effort to save the indictment here by a construction waived in the district court.

this Court to review the issue of statutory construction raised by the indictment as construed by the district court. We are, therefore, presenting to the Court our arguments with respect to the interpretation of the statute on the basis of the district court's interpretation of the indictment and with respect to the constitutional issues that would be raised if the statute were construed to prohibit the acts charged in the indictment.

II

Payments by a Labor Union for Commercial Television Broadcasts to Inform Its Members and Others of the Position of the Union on Candidates for Representatives or Senators in Congress Are Not Expenditures Prohibited by 18 U.S.C. 610

In the nine years since the passage of the 1947 amendments to the Federal Corrupt Practices Act making expenditures unlawful and applying the Act to labor organizations, only three prosecutions of labor organizations (and none of corporations) were instituted prior to the present indictment.¹⁸ In all of these cases, the courts, including this Court, have held that the acts charged were not within the purview of the statute. *United States v. CIO*, 335 U. S. 106; *United States v. Painters Local Union*, 172 F. 2d 854 (CA 2, 1949); *United States v. Construction and General Laborers Local Union*, 101 F. Supp. 869 (W.D. Mo. 1951). Because of the direct relevance of the *CIO* and *Painters Local* cases, we deal with them in detail.¹⁹

¹⁸ Hearings Before the Subcommittee on Privileges and Elections of the Committee on Rules and Administration, United States Senate, 84th Cong., 1st Sess., on S. 636, p. 203.

¹⁹ The *Construction and General Laborers* case involved union payments for activities by three union employees in putting up posters, passing out cards and pamphlets, driving voters to register and to the polls, and driving a campaign van, all for the election of a Congressional candidate.

The *CIO* case involved an indictment against the Congress of Industrial Organizations and Philip Murray, its President, because of the publication in the *CIO News*, a weekly owned and published by the *CIO* from its general funds, of a front-page statement by Mr. Murray urging that a particular candidate be supported in a special Congressional election in Maryland. The district court sustained a motion to dismiss the indictment on the ground that the statute was unconstitutional as an unwarranted abridgment of the First Amendment. In arguing the Government's direct appeal under the Criminal Appeals Act, both the Government and the *CIO* touched only upon the constitutionality of the statute. No argument was made by either side concerning the propriety of the indictment under the Act. Nevertheless, a majority of this Court, holding that the Court's first obligation is to avoid grave issues as to the constitutionality of a statute, considered first whether the indictment stated an offense under the statute and held that the Act did not cover the publication by a union from its general funds of a regular periodical advocating the election to office of particular candidates. *United States v. CIO*, 335 U. S. 106. The Court came to this interpretation on the basis that any other would involve "the gravest doubt" of the constitutionality of the statute (335 U. S. at p. 121) and would not give due recognition to the fact that "Congress was keenly aware of the constitutional limitations on legislation and of the danger of the invalidation by the courts of any enactment that threatened abridgment of the freedoms of the First Amendment" (335 U. S. at p. 120).

The district court held that none of these activities constituted either a "contribution" or an "expenditure" as charged in the indictment. Obviously that case goes far beyond a union's expression of views on candidates and goes far beyond anything required to uphold the decision of the district court below.

This conclusion was reached despite the apparently all-inclusive language of the statute and some convincing legislative history to the contrary (see debates set out in 335 U. S. at pp. 116-120).²⁰ As this Court has itself stated in a subsequent decision, it "strained words" in the *CIO* case (see *United States v. Rumely*, 345 U. S. 41, 47) to avoid the difficult and highly controversial constitutional issues which would have been raised by a broader interpretation of the statute.

The net result of the Court's decision was stated by Justice Reed for the majority of the Court (335 U. S. at p. 123):

"It is our conclusion that this indictment charges only that the CIO and its president published with union funds a regular periodical for the furtherance of its aims, that President Murray authorized the use of those funds for distribution of this issue in regular course to those accustomed to receive copies of the periodical²¹ and that the issue with the statement described at the beginning of this opinion violated § 313 of the Corrupt Practices Act.

²⁰ These debates in Congress clearly showed that no expenditures for official organs, such as the CIO News, were intended to be permitted unless funds came from subscriptions or other separate sources. This was the understanding of the legislative history by the Government (Brief for the United States, *United States v. CIO*, No. 695, Oct. Term, 1947, pp. 44-46) and was generally accepted by the CIO (Brief for Congress of Industrial Organizations, *United States v. CIO* No. 695, Oct. Term, 1947, p. 56). See also Brief on Behalf of American Federation of Labor, *Amicus Curiae*, in the same case at pp. 1-2.

²¹ Another instance of the "strained" construction into which the Court was forced by its desire to avoid the constitutional issue is the view it took of certain allegations of the indictment. Although the indictment contained allegations about expenditures for 1,000 "extra copies" of the challenged issue of the CIO News, the Court did "not read the indictment as charging an expenditure by the CIO in circulating free copies to nonsubscribers, nonpurchasers or among citizens not entitled to receive copies . . . as members of the union" (335 U.S. at p. 111).

"We are unwilling to say that Congress by its prohibition against corporations or labor organizations making an 'expenditure in connection with any election' of candidates for federal office intended to outlaw such a publication. We do not think § 313 reaches such a use of corporate or labor organization funds. We express no opinion as to the scope of this section where different circumstances exist and none upon the constitutionality of the section."

Four justices of this Court were unable to go along with the majority's construction and wrote a concurring opinion holding that the Act clearly violated the rights of freedom of speech, press, and assembly secured by the First Amendment.

This Court has thus specifically ruled that expenditures in publishing a union newspaper and distributing copies thereof to those accustomed to receive them are not "expenditures" within the meaning of Section 610. The court below could find no distinction in the statute between payments to make possible the expression of the union's views in a union newspaper and payments to make possible the expression of the union's views over a commercial television station. Certainly there is no statutory language on which such a distinction could be predicated. Equally clearly, the legislative history offers no ground for any such distinction; indeed the discussion on the floor of the Senate evidenced a concern with the expression of union views through a union newspaper at least as great as with the expression of a union's views through commercial channels. 93 Cong. Rec. 6436-6440. Furthermore, the policy of interpreting the statute in such a way as to avoid constitutional questions applies with at least equal force to the indictment now before the Court. For, as the district court said, appellee "desired to inform its members and others of the position

of the Union on those seeking certain federal offices. It was exercising the right of free speech" (R. 43). Indeed, since the union was here seeking to communicate with the public at large, rather than simply a segment of the public (its own membership), it was exercising the more traditional right of free speech. It is this very communication with the public at large that brings about the "free political discussion" (*DeJonge v. Oregon*, 299 U.S. 353, 365) and the "informed public opinion" (*Grosjean v. American Press Co.*, 297 U.S. 233, 250) which "lies at the foundation of free government by free men." *Schneider v. State of New Jersey*, 308 U.S. 147, 161.

Every practical consideration of American life calls for the rejection of a line between a union expressing its views to its own membership and a union expressing its views to the public at large. Appellee union has particularly sought to carry on its work as part of the general community and has sought to participate in every aspect of community life. There is, indeed, a certain repugnance in the idea that the union as an entity should be in a position to cooperate with all other citizens in all aspects of community life, but should be set apart in that very political activity upon which our democracy depends. One cannot believe that Congress intended any such result.

The court below was not the first court that could find no legal distinction in the difference between the expression of a union's views in a union newspaper and the expression of its views over a commercial broadcast station. *United States v. Painters Local Union*, 172 F. 2d 854 (CA 2, 1949) involved an indictment brought prior to this Court's opinion in the *CIO* case, alleging that the defendant union (and its President) had placed and paid for a political advertisement in a daily newspaper of general circulation and had paid for and sponsored a political broadcast over a commercial radio station. The funds for these expenses were

derived from the general treasury of the union. Both the advertisement and the radio broadcast advocated the defeat of Senator Taft as a candidate for the presidency and the rejection of all incumbent Republican congressmen.

The defendants had moved for dismissal and acquittal below on constitutional grounds and the case had been argued both in the district court and before the judges of the Second Circuit solely on the constitutional issues. No contention was made by the defendants that the statute was inapplicable. Judge Hincks, in the district court (79 F. Supp. 516 (D. C. Conn. 1948)), denied the motion for dismissal and acquittal and held that the statute was constitutional. In denying the motion to dismiss, he described the expenditure alleged in the indictment in terms directly applicable to this case. He said (at pp. 518-519):

“Here the charge is that in connection with a federal election . . . union monies were expended for a publication of expressions of political advocacy intended to affect the result of the election and the action of the convention in an established newspaper of general circulation and for a broadcast by a commercial radio station serving the general public.”

The Court of Appeals for the Second Circuit reversed. Judges A. Hand, Clark and Frank constituted the bench, and, like this Court in the *CIO* case, avoided the constitutional issue by a ruling on the scope of the statute. They held that these political advertisements in media of information commercially-owned and of general circulation were not prohibited “expenditures”.²² Judge Hand, writing for

²² From this landmark decision on facts identical with the case at bar no petition for certiorari was filed by the United States. To quote Mr. Justice Frankfurter's concurring opinion in *Andres v. United States*, 333 U.S. 740, 756, commenting on a similar failure: “While a failure of the Government to seek a review of that decision by this Court has no legal significance, acquiescence by the Government in an important ruling in

the Court, said (page 856) that "it seems impossible, on principle, to differentiate the scope of that decision [*United States v. CIO*] from the case we have before us" and he noted that any differentiation between a union-owned newspaper such as was involved in the *CIO* case, and an independent newspaper or radio station "seems without logical justification; nor is such a differentiation suggested by the apparent purposes or by the terms of the statute or by its legislative history."

In reaching its conclusion that the statute was inapplicable to general newspaper and radio advertising, the Court of Appeals did not rely on any specific legislative history or other indication of congressional intent. It relied on its analysis of the meaning of this Court's decision in the *CIO* case, and particularly on the majority's declaration that the addition of "expenditures" was not intended "to extend greatly the coverage of the section". It emphasized (p. 856) that all nine Justices of this Court had either thought the statute unconstitutional or of "exceedingly doubtful constitutionality" so that in reality, the constitutional question was not "of first impression". Therefore, it felt "constrained" to hold that the statute did not cover the facts of the case.²³

the administration of the criminal law . . . carries intrinsic importance where the construction in which the Government acquiesced is not one that obviously is repelled by the policy which presumably Congress commanded."

²³ The Government's attempted distinctions of the *Painters Local* case (*Brief*, p. 20) are without force:

(i) The suggestion that the expenditures "were expressly authorized at a special membership meeting" is a total irrelevancy so far as the statute is concerned; indeed there is not the slightest hint in the indictment at bar that appellee did not act with equal authority from the appropriate governing body of the appellee union.

(ii) The suggestion that the expenditures were "very small" falls before the fact that there is nothing in the word "expenditure" in the statute, or in the legislative history, or in the constitutional principles here at stake which warrants the drawing of a line based on the size of the

Thus authority supports logic in demanding the application of the *CIO* case to the indictment at bar. We turn now to the Government's arguments to the contrary. We will not, however, make further response to those of the Government's arguments which, going beyond the district court's construction of the indictment, are based on the content of the communications or the intent with which they were made. As already pointed out (see pp. 14-20, *supra*), these arguments are not properly before the Court.

(1) The Government argues that the use of general union funds to finance commercial television broadcasts supporting particular candidates in a federal election is "squarely within the literal language of the statute" (*Brief*, p. 17). Admittedly this is so. But no less did the expenses involved in the *CIO* case for the publication and distribution of the union's views through a union periodical fall within the literal meaning of the term "expenditure". Yet, because of this Court's obligation to avoid grave constitutional issues and because the word "expenditure" had been added to the statute "to eradicate the doubt that had been raised as to the reach of 'contribution,' not to extend greatly the coverage of the section" (335 U. S. at p. 122), this Court narrowed the literal terms of the word "expenditure" to exclude a union's expression of views in a union

expenditures; indeed such a line, by its very vagueness, would create more problems than it settled. Judge Picard stated in his opinion that he thought it would be "presumptuous" for the courts to write into the statute a distinction, nowhere suggested by Congress, based on the amount of the expenditure (R. 43).

(iii) The suggestion that this union "owned no newspaper" and therefore had to communicate its views to its members through public facilities is hardly a ground of distinction, both because the Court of Appeals did not make it a ground of distinction and because no rational line could be drawn between those unions which have newspapers and those which do not. No doubt all unions have some adequate method of communicating with their members, such as a mailing list, to whom a mimeographed statement could be sent.

periodical. The Government suggests no reason why the literal meaning of the term "expenditure" is any more applicable in the case now before the Court than on the facts presented in the *CIO* case nor why the same considerations which led the Court to narrow the application of the term "expenditure" in the *CIO* case are not equally present in this case.

(2) The Government places special reliance upon the legislative history of the statute and particularly upon statements made by Senator Taft indicating that the statute would prohibit a union from purchasing broadcast time to state its views on a forthcoming election (*Brief*, pp. 30-36). But in this very same debate from which the Government quotes, Senator Taft gave the identical answer with respect to the expression of a union's views in a union periodical.²⁴ When asked whether a labor house organ would be permitted under the pending bill to carry an endorsement for a candidate considered friendly to labor, Senator Taft replied, "If it were supported by union funds contributed by union members as union dues it would be a violation of the law." 93 Cong. Rec. 6436. The same opinion was expressed by Senator Taft in another part of this same discussion:

"Mr. Magnuson. . . . They [labor groups] publish so-called labor organs, and a part of a member's dues goes to subscribe for the labor organ. If such an organ were not published the member's dues would be correspondingly less. . . . But now unions collect the subscription along with the dues.

²⁴ Both parties in the *CIO* case assumed that the legislative history supported the proposition that the expenses of publishing a union newspaper from union funds constitute "expenditures" within the meaning of the statute. *Brief for the United States, United States v. CIO*, No. 695, October Term, 1947, p. 44 *et seq.* and *Brief for the Congress of Industrial Organizations, United States v. CIO*, No. 695, October Term, 1947, p. 56.

"Mr. Taft. The case is the same as the case of a corporation house organ. A corporation house organ is published and sent out to employees, sometimes many thousands of them. A corporation which used such a house organ to try to elect or defeat a political candidate would certainly be violating the law, in my opinion. Such a law has been in existence for 25 years. What we are now doing is to write into the law the same prohibition with respect to labor organizations as now exists with respect to corporations." 93 Cong. Rec. 6440.

In the *CIO* case, this Court rejected Senator Taft's clearly stated views as to the meaning of the word "expenditure" in connection with the expression of a union's views in a union periodical, explaining that "it would require explicit words in an act to convince us that Congress intended" such a result.²⁵ The Government fails to suggest any reason why this Court should give greater significance to Senator Taft's comments on broadcasts than it did to his comments on union periodicals.

(3) The Government's primary argument against the district court's interpretation of the statute seems to be that "the decision below actually results in a holding that *no* union-financed political broadcasts, regardless of charac-

²⁵ This Court's rejection of Senator Taft's statements may have been facilitated by the circumstance that the Senator had no part in the origination of the "election expenditures" provision of the Act (Section 304, now 18 U.S.C. § 610). The provision was in the House bill, H.R. 3020, § 304, but not included in Senator Taft's bill, S. 1126. It was passed by the House, accepted by the Senate Conference and subsequently debated by Senator Taft and others on the floor of the Senate. It might be noted, too, that subsequent to the three judicial decisions already cited, Senator Taft brought about the repeal of the "expenditure" prohibition in the Senate. S. 249, 81st Cong., 1st Sess., 1949, as amended and adopted June 30, 1949. The bill died when the House of Representatives failed to take action upon it.

ter or surrounding circumstances, can ever be in violation of the section" (*Brief*, p. 22). But this statement is both inaccurate and irrelevant. In light of the construction of the indictment by the district court, there are many types of union broadcasts which were not ruled outside the term "expenditure" by his decision. The Government itself has provided one such example not covered by the decision below—repeated sloganeering such as "Vote for Mr. X, the union's friend." Whether an expenditure for such a broadcast is within the prohibition of 18 U.S.C. 610 is not before this Court on this indictment; but certainly the decision below did nothing to exclude such a broadcast from the coverage of the statute. Furthermore, even if all union-financed political broadcasts were excluded from the statute in deference to the constitutional issue of free speech that might otherwise arise, this would not mean that the "expenditure" provision would be without force and effect. There are many types of expenditures other than those in the area of speech that might still come within the reach of the statute and thus give meaning to its terms. For example, the payment of any expenses of the candidates themselves or the placing of facilities at the disposal of candidates might well prove to be the type of indirect contribution which Congress meant to bar through its addition of the word "expenditure" in the 1947 amendments. If it should ultimately be held that all political broadcasts are outside the scope of the statute, either as a matter of statutory construction or of constitutional right—which the district court certainly did not hold—the statute would still not want for force and effect.

(4) Finally, the Government contends that "paying for a political broadcast on behalf of a particular candidate . . . differs but little from a direct contribution; the distinction lies only in the fact that in one instance the

candidate would apply contributed funds to purchase television time and in the other the union would buy it for him'' (*Brief*, p. 17). We respectfully submit that there is a substantial difference between a union stating its own views on a television program and a union purchasing television time for a candidate to state his views in his own way.²⁶

When unions or corporations or individuals or groups of individuals, under their own names and auspices, express their own views on candidates, they are exercising the right of free speech either as organizations or as individuals. This is a far cry from the payment for a broadcast on which the candidate expresses his own views in his own way. In the first place, such an exercise of free speech by a union or corporation may or may not benefit the particular candidate involved. Thus a television address by Walter P. Reuther, appellee's President, explaining the union's position in favor of a candidate in Mississippi, might well be less than helpful to the candidate there in view of Mr. Reuther's well-known advanced views on civil rights. In the second place, when the union expresses its views on a candidate, it is injecting its position into the broadcast rather than the position of the candidate. Thus, even in an area where the expression of union views would generally be helpful to the candidate, the union might still stress matters of interest to it rather than those on which the candidate would prefer to base his campaign. In the third place, an expenditure for a broadcast to express the union's views has none of the possible corrupting influence

²⁶ Additional factual situations are also possible. A candidate might be asked to participate in a union program for the purpose of obtaining public answers from the candidate on questions of interest to the union and thereby helping to assure that the candidate would live up to those answers in the future. Furthermore, a union might request both candidates to participate in its programs in the belief that such participation would aid in public understanding of the issues, and both or only one of the candidates might accept the invitation.

of large contributions to the candidate himself.²⁷ Thus it seems quite clear that the expression over a commercial television program of the union's views is not, as the Government would have the Court believe, the same thing as a contribution to the candidate. Of course, as already pointed out, the indictment does not charge a contribution and counsel for the Government reinforced this point in the court below (R. 24).

.

For six years after the *CIO* and *Painters Local* decisions, no prosecutions were brought against unions for the expression of their views via commercial newspapers and radio and television stations and unions were left free to express their views on elections. The reason for this inaction by the Government was given by the Assistant Attorney General of the United States in whose jurisdiction prosecution of cases under this statute falls. Assistant Attorney General Warren Olney, III, in charge of the Criminal Division, testified in May, 1955, in hearings on possible amendments to the Federal Corrupt Practices Act,²⁸ that because of the shortcomings in this statute, there have been only three prosecutions under this section.²⁹ He attributed this result to what he described as the "view that the [Supreme] Court takes as to the importance of leaving open all media of public expression for political candidates

²⁷ The Government speaks of "the reciprocal obligations of the political candidate" for the political support of the union (*Brief*, p. 55). But certainly these "reciprocal obligations" are far less, if they exist at all, where the union states its position on a forthcoming election than when it contributes directly to the candidate.

²⁸ Hearings before the Subcommittee on Privileges and Elections of the Committee on Rules and Administration, United States Senate, 84th Cong., 1st Sess., on S. 636, pp. 201, 202-203, 209-210.

²⁹ The *CIO* case, *supra*; the *Painters Local* case, *supra*; the *Construction and General Laborers* case, *supra*.

and for supporters." He went on to say that, although this Court had not directly ruled on the constitutionality of the statute, "out of the 9 members of the Supreme Court there was not 1 that expressed the view that section 313 [18 U.S.C. § 610] was constitutional. There were 4 of them who were of the view that it was not, and the majority, the other 5, did not pass on the question, but put a caveat in their opinion that they had serious doubt about the constitutionality of it."

Mr. Olney went on to discuss a proposed amendment to the Act which would require consent or authorization by a candidate before a political committee could engage in certain types of political activity. Mr. Olney said:

"The implication of the language of all the judges, both the dissenting and the majority opinions in that case [*United States v. CIO, supra*] is that they have serious doubts about a law which says that a group of people interested in a campaign cannot really—and that means without restrictions even as far as finances are concerned—engage in political activity. They indicate a clear reservation that it may be affected by the first amendment that guarantees freedom of the press and of speech.

"In this provision, the way it is worded now, you see, it is not aimed at requiring the publication of information so that it is fair to the voters, it is a prohibition against the committee collecting money or actively supporting the candidate, if the candidate doesn't want them. . . .

"The thing that it would require is an open public disclosure of the fact as to whether the activity is endorsed by the candidate whom it is supporting, or whether it isn't.

"I do think that the question of the constitutionality of that section is important. And I have serious reservations about it."

Mr. Olney was then questioned by the Committee members, and the following colloquy ensued:

"Mr. Duffy. You also referred to the constitutional question which arises as concerns section 304 of this proposed bill which purports to amend section 610 of title 18, which I believe is the same as the Taft-Hartley Act as it stands today.

"Do you believe that it would be better to leave section 610 of title 18 exactly as it is, or do you think that by allowing it to stand unchanged you would still be confronted with the constitutional problem as stated in the CIO case?

"Mr. Olney. Well, if section 304 of 636 is enacted, it still will not affect the dilemma and the difficulty that we are faced with because of the CIO decision.

"Mr. Duffy. It wouldn't help you at all?

"Mr. Olney. No, it wouldn't.

"Mr. Duffy. In fact, it might increase the difficulty; is that true?

"Mr. Olney. Yes; simply because it would be a new expression by Congress reaffirming this same statute notwithstanding the CIO decision. I am sure you can imagine the consternation of my predecessors when the Supreme Court disposed of that CIO case by ducking the issue. They just didn't pass on the constitutional point. *They expressed so many doubts about it, all of them did, that it made it almost impossible, certainly impractical, to prosecute under it.*" (Emphasis added.)

Thus, as of May, 1955, this Court's decision in the *CIO* case made it "almost impossible, certainly impractical, to prosecute" under Section 610. One can only speculate on what happened after May, 1955, to cause the Department of Justice to reverse its position and seek to prosecute under the statute.³⁰ Certainly no judicial decision intervened and indeed the only judicial decision between Mr. Olney's statement before the Senate Committee and the Government's Brief in this Court is Judge Picard's decision following the *CIO* case in line with Mr. Olney's testimony. We do not refer to Mr. Olney's pre-indictment position here to embarrass either him or the Government, but rather to point out how recent is the Government's belief in the narrow application of the *CIO* case and how different is the Government's position here today from its objective judgment prior to this indictment.

It is respectfully submitted that, upon the district court's interpretation of the indictment and this Court's opinion in the *CIO* case, the decision below should be affirmed.

We turn now to those serious constitutional questions with which this Court would be faced if it should hold that Section 610 prohibits a payment by a union for a television broadcast to inform its members and others of the position of the union on those seeking certain federal offices. That these *are* serious constitutional issues sufficient to warrant a construction which would avoid the necessity of their resolution at this time is demonstrated both by the majority and the minority opinions in the *CIO* case. We believe,

³⁰ Shortly after Mr. Olney testified, the Chairman of the Republican State Central Committee of Michigan, one John Feikens, testified before the Subcommittee on Privileges and Elections. Mr. Feikens made a number of allegations concerning expenditures by labor unions for political purposes and specifically referred to the series of television broadcasts with which this indictment is concerned (Hearings, *supra*, n. 28, at pp. 236, 242).

however, that, while a decision on the constitutional issues is not necessary in this case, the Court may wish to have before it the pertinent arguments on the constitutional issues.

III

Section 610 Abridges Freedom of Speech, of the Press, of Assembly and of Petition in Violation of the First Amendment to the Constitution of the United States

Before this Court reaches this difficult constitutional issue involving the statute's effect on First Amendment freedoms, Section 610 must be construed to prohibit the expenditures charged in the indictment as interpreted below. So construed, the statute prohibits payments of money by labor unions for the purpose of disseminating to members and to the public their views about candidates through public media of information. Such a prohibition is an unlawful restraint on the freedoms of speech, press, and assembly and on the right of petition guaranteed by the First Amendment.

A. The First Amendment Is Nowhere More Directly Applicable Than in the Area of Free Political Discussion and Association

Section 610 prohibits expenditures by labor unions in connection with any federal election and certain enumerated preliminary steps in the electoral process. We shall describe in the next subsection (III B) just how this restraint upon expenditures operates as a restraint upon all those political activities which utilize the freedoms guaranteed by the First Amendment. Here we should like to emphasize to the Court what seems to us the heart of

the constitutional issue treated here: the principle that widespread participation in the electoral process is the foundation of our democracy. Restraints on freedom of speech and press in this area where free political expression is of the greatest importance result in evils far more serious than any which the restraints seek to prevent.

This Court has recognized that it is precisely because free political discussion is the prerequisite to effective democratic change that it must receive the highest degree of protection.³¹ In *Stromberg v. California*, 283 U. S. 359, 369, Mr. Chief Justice Hughes stated:

“The maintenance of the opportunity for free *political discussion* to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a *fundamental principle of our constitutional system*.” (Emphasis added.)

This same point was stressed in *DeJonge v. Oregon*, 299 U.S. 353, 365, where the Court noted that:

“... the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful

³¹ The central theme which appears to underlie the historic decisions of this Court in the area of First Amendment rights has been, from the first, the protection afforded the democratic process by the opportunity for free political discussion. Thus, in *Whitney v. California*, 274 U.S. 357, 375, Mr. Justice Brandeis, concurring for himself and Mr. Justice Holmes, foreshadowed the later decisions of this Court with the statement “that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth . . . that public discussion is a political duty . . . [is] a fundamental principle of the American government.”

means. Therein lies the security of the Republic, the very foundation of constitutional government."

Speaking of the liberty of the press in *Near v. Minnesota*, 283 U.S. 697, 717-18, this Court said:

"Madison, who was the leading spirit in the preparation of the First Amendment of the Federal Constitution, thus described the practice and sentiment which led to the guaranties of liberty of the press in State Constitutions:

'In every State, probably, in the Union, the press has exerted a freedom in canvassing the merits and measures of public men of every description which has not been confined to the strict limits of the common law. On this footing the freedom of the press has stood; on this footing it yet stands.' "

The particular importance of a free press as a check upon misgovernment received emphasis in *Grosjean v. American Press Co.*, 297 U.S. 233, 250, in the following language:

"... since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgement of the publicity afforded by a free press cannot be regarded otherwise than with grave concern."

The fundamental nature of First Amendment rights as the base of our democratic system was stated again by this Court in *Schneider v. State of New Jersey*, 308 U. S. 147, 161:

"This court has characterized the freedom of speech and that of the press as fundamental personal rights and liberties. The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of

the Constitution that exercise of the rights lies at the foundation of free government by free men. It stresses, as do many opinions of this court, the importance of preventing the restriction of enjoyment of these liberties."

The Court's reference to the framers of the Constitution is particularly noteworthy for even in the debates at the Convention the importance of free elections was urged.³² James Madison, a few years after the beginnings of our government, said in connection with the Alien and Sedition Laws³³ "... this is a power which, more than any other, ought to produce universal alarm, because it is levelled against that right of freely examining public character and measures, and of *freely communicating thereon*, which has ever been justly deemed the *only effectual guardian of every other right*." (Emphasis added.)

More recently, at the very beginning of congressional consideration of the regulation of federal elections in the area of possible corruption, Bourke Cockran, one of the most active proponents of electoral reform legislation, made it clear that freedom of political expression was deemed indispensable to a sound electoral system. He thus testified in support of his proposed bills:³⁴

"The spectacle of this country passing upon a question so intricate as that involved in 1896 . . . the information which the people obtain every four years about the working of their government in all its departments, as well as in the fundamental propositions involved in the legislation likely to affect their condition, is something that has never been witnessed on

³² See pp. 82-83, *infra*.

³³ IV Elliot, *Debates in the Several State Conventions on the Adoption of the Federal Constitution* (p. 561).

³⁴ Hearings before House Committee on the Election of Presidents, March 12, 1906, p. 40.

this earth before, and, to my mind, this great national quadrennial popular debate is the source from which all the meritorious legislation of this country has proceeded, and it is the chief bulwark of the Government under which we live.

“Whatever else may happen, I don’t want the vigor, efficiency, or scope of these Presidential discussions limited, impaired or endangered in the slightest degree. Whatever we may do to check corruption, I hope we will not tolerate any suggestion likely to result in diminishing the number of meetings at which citizens have been in the habit of discussing grave problems of government, of the volume of literature circulated for their information. *At the very threshold of an attempt to prevent expenditures for corruption we should take precautions to maintain and even increase expenditures for enlightenment.*” (Emphasis added.)

Because of this deep concern for preserving the freedom of political expression as the basis for democratic self-government, statutes which restrict that freedom are subject to the most searching scrutiny by this Court. Indeed, this obligation to give full scope to First Amendment freedoms has effectively nullified the usual presumption of constitutionality. *United States v. Carolene Products Co.*, 304 U.S. 144, 152-153, n. 4. The cases indicate that, in fact, there must be clear affirmative support for a deprivation of these rights, and that this rule amounts almost to a presumption in favor of rights guaranteed by the First Amendment. *Thomas v. Collins*, 323 U.S. 516, 529, 530; *West Virginia State Board v. Barnette*, 319 U.S. 624, 639; *Thornhill v. Alabama*, 310 U.S. 88, 95, 96; *Cantwell v. Connecticut*, 310 U.S. 296, 311; *Bridges v. California*, 314 U.S. 252, 262, 263.

This Court stated the rule in *Schneider v. State of New Jersey, supra*, at p. 161:

“In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effects of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions.”

Having in view these standards for the examination of a statute involving the abridgment of First Amendment freedoms, we turn now to the breadth of the restraint which the statute imposes on the exercise of the democratic rights of free political expression.

B. The Statute Prohibits that Free Political Discussion and Association Which Lies at the Heart of the First Amendment

Section 610, as construed by this Court to reach this point, prohibits payments to television stations, radio stations, newspapers and magazines to disseminate a labor union's views on political candidates. This reading of the statute would likewise appear to interdict all other expenditures of a political nature, such as those for holding public gatherings in support of a candidate, getting out the vote for a particular candidate, distributing placards and campaign literature. Appellee, its constituent locals and its officials, and through them, the members of appellee union, would be forbidden as a group organized in a labor union to make any expenditure for these traditional and fundamental political activities.

Every one of the described political activities utilizes speech or the press, involves assembly or petition. None of these activities can be carried on without an expenditure. If the statute is construed to cover the facts alleged in this indictment, it will achieve the elimination of organized labor from participation in federal elections and to that extent from public affairs.³⁵

³⁵ The Government's answer to all this (*Brief*, pp. 39-51) is that the statute has not worked to carry out Senator Taft's dictum that "labor unions are supposed to keep out of politics" (93 Cong. Rec. 6440). The Government takes great pains to point out to this Court that labor may still participate in political action through (i) separate voluntary associations or funds, (ii) intra-union publications allowed by the CIO case, (iii) action in behalf of state candidates, and (iv) registration drives (*Brief*, pp. 48-51).

(i) The Government quotes at length (*Brief*, pp. 40-50) from AFL-LLPE and CIO-PAC descriptions of the activities formerly carried on by those organizations with the inference being left that these activities were financed from voluntary contributions rather than union dues. It particularly emphasizes LLPE's publication of a weekly newspaper which discussed pending legislation and carried voting records; its sponsoring of radio broadcasts; and its preparation of phonograph records and other publicity material. In fact, however, these LLPE activities, while generally related to public and political issues, were carried on during a non-election year—1949—and were financed by a special assessment on AFL unions. (*Brief*, p. 50). Unquestionably those unions paid the assessment out of dues money, not out of voluntary contributions.

It has been the experience of LLPE and PAC, and thus far of COPE, that only limited amounts may be raised from individual contributions. See testimony of Jack Kroll and James L. McDevitt, formerly directors respectively of PAC and LLPE and now co-directors of COPE, before Senate Subcommittee on Privileges and Elections, September 10, 1956. The testimony of Kroll and McDevitt leaves no doubt that the amounts which can be raised from individual contributions are quite limited in amount; are used principally for contributions to candidates; and are inadequate to finance any general expression of labor's views over public media of communication.

Furthermore, the Government does not and could not mention any comparable activity in appellee union. We cannot believe that the Government means to suggest that the rights of the appellee union and its members to engage in political activity could properly be satisfied by the work of a federation of which it is but a small part and which includes groups with views considerably at variance with its own.

Nor should the difficulty in raising dollars, which PAC, LLPE and COPE have experienced (Keenan, *The AFL-LLPE and How It Works*,

Moreover, this elimination will directly restrain and equally impair the correlative right of the public to hear and be informed through the exercise of a labor organization's rights under the First Amendment. "The right of freedom of speech and press . . . embraces the right to distribute literature . . . and necessarily protects the right to receive it." *Martin v. Struthers*, 319 U.S. 141, 143.

The House of Labor, pp. 113, 115), come as a surprise to anyone. Union members believe that they have already contributed for all union activities by the payment of their union dues, intended not only for collective bargaining but also for legislative, political and other community activity. No union member expects that he will have to pay twice to have his union's views expressed.

Thus the Government's argument is merely that the prohibition of union political expression is ameliorated by the possibility of alternate, less effective and far more limited means of expression. Such a possibility, real or fanciful, will not suffice. The First Amendment precludes not only prohibition of speech but also abridgment of its full and free exercise. *Grosjean v. American Press Co.*, 297 U.S. 233, 249-251; *Thomas v. Collins*, 323 U.S. 516, 538-540; *Winters v. New York*, 333 U.S. 507; cf. *Wieman v. Updegraff*, 344 U.S. 183.

(ii) The allowable activity under the *CIO* case of communicating with the union's own members is hardly that freedom of political activity which the First Amendment protects. American trade unions do not seek to set themselves apart as a special enclave wielding power in America. They seek to operate as an integral part of the general community. The limited freedom of the *CIO* case might very well tend to separate union members from the general community contrary to the public interest.

(iii) The fact that most states have respected the constitutional rights of labor unions is hardly a ground for suggesting that the Federal Government need not do so. Furthermore, we must record a trend in some states to follow the federal lead in this field. See, e.g., Chapter 135, Wisconsin Laws of 1955; Chapter 273, New Hampshire Laws of 1955.

(iv) We cannot believe the Government seriously suggests that the right to get people registered, as distinguished from the right to urge them to use their ballots in a particular way, is the fundamental right involved here.

Finally, all that the Government says in these respects fails to meet its own concession to appellee's case. Thus at page 63 of the Government's Brief it is stated: "It may be conceded that a labor union, in the interest of the economic function for which it was primarily organized, has a legitimate interest in political affairs and therefore a right as an entity to present its views." (Emphasis added.) Nothing in the rights which the Government accords, which we have reviewed above, protects appellee's "legitimate interest in political affairs" and its "rights as an entity to present its views."

Furthermore, the statute denies individual rights of voluntary association. All apart from the right of the union as an entity to express its view on candidates, the rights of the individuals who formed and joined that union for legitimate collective interests are infringed by the prohibitions of the statute. The members of the union, who first wrote its founding purposes by democratic means and who retain the right to alter or amend those purposes by the same means, have not restricted the union to collective bargaining. On the contrary, they have authorized it to protect and further their interests as working men by various means, including the support of candidates who best represent those interests.

Included in the Constitution of appellee union is Article II, Section 4:

"To educate our membership in the history of the Labor Movement and to develop and maintain an intelligent and dignified membership; to vote and work for the election of candidates and the passage of improved legislation in the interest of all labor. To enforce existing laws; to work for the repeal of those which are unjust to Labor; to work for legislation on a national scale, having as its object the establishment of real social and unemployment insurance, the expense of which to be borne by the employer and the Government."

This clause has been part of the union's constitution since its founding in 1936.

The statute forbids individuals from maintaining labor organizations which advance their interests as working men by political means. Put another way, it forbids working men to act through their labor unions in the political field to protect their collective rights—their rights as union members and the rights of the union in which they

have joined. Even though the choice of candidates may determine whether those rights will be secure or destroyed, the statute prohibits the union from protecting and advancing those rights.

A candidate may favor repeal of the Taft-Hartley Act and outlawing Right-to-Work laws; he may favor a higher minimum wage and a law forbidding discrimination in employment. Yet the union may not spend a penny to express its support of such a candidate. Another candidate may favor applying the anti-trust laws to unions, a Federal Right-to-Work law, and even a law to strengthen the present ban on labor political activities. The union may not spend a penny to express its opposition to such a candidate, whether such opposition be by majority or unanimous action of its members.

From the first, there has been no line of demarcation between the bargaining, educational and political activities of unions. There is a tradition of over 100 years of union political activity in this country.³⁶ As the Federal Government has increasingly legislated in the field of union activity and on economic matters such as wages, hours and conditions of employment which are of the most immediate concern to laboring men as workers and as union members, the necessity for labor union political activity has correspondingly increased. Today the passage or defeat of any number of bills affecting working men and their unions may be of as great importance to union members as even the collective bargaining process itself. Indeed, the very growth of the union movement in this country to its present stature was achieved at least in part through the pattern of federal labor laws in the 1930s, and the restrictions in effect

³⁶ At the very beginning of the labor movement in the United States unions employed political action as a primary means of advancing the interests of their members. See Ch. III of *Labor in America*, by Foster Rhea Dulles.

since 1947 materially curb the further growth of that movement.

Under these circumstances the election of candidates to Congress favorable or opposed to the interest of unions and laboring men is far from tangential or irrelevant to the purposes of labor unions. Political action and the public presentation of the union's views on who best represents the interest of working men and their associations, is essential to the preservation and advancement of their common interests. This is recognized by the constitution and organization of appellee as well as every other major labor union in the country. Political representation of union members' interests as union members and workers is at the very center of the purpose for which labor unions are formed and maintained. This is the purpose for which the statute forbids working men to associate in labor organizations.

Our political tradition calls for a constantly increasing participation by citizens in discussions leading to the choice of candidates as well as the final vote. It also calls for an increasing attempt to reach more citizens with discussions of issues and candidates. But this statute deprives appellee and its members of this participation and of the benefit of such discussions. Moreover, the deprivation is so extensive and so complete that the statute cannot be viewed as a regulatory device; it amounts to a complete prohibition of group political expression by labor unions.³⁷

C. The Rights Guaranteed by the First Amendment Have Been Protected From Much Milder Restraints Than This Statute Imposes

We have emphasized the fundamental importance to our constitutional system of the rights guaranteed by the First

³⁷ See n. 35, pp. 52-53, *supra*.

Amendment and the jealous guardianship which this Court has repeatedly demonstrated for those rights. We have shown that Section 610 ³⁸ imposes a direct restraint on political activity involving many of the rights protected by the First Amendment. This restraint cannot stand in the face of a long line of decisions by this Court.

In a series of cases this Court has given First Amendment rights broad and sure protection. The Court has time after time struck down legislation or other governmental action which it found to threaten preservation of the fullest possible exercise of these rights. Indeed, most of the regulations which this Court has outlawed in its effort to give complete protection to civil rights have been those which only incidentally impaired those rights. If these regulatory and tax impingements on First Amendment rights cannot withstand the Constitution, the outright prohibition which Section 610 entails, and which we have discussed in the preceding subsection, surely cannot stand as valid.

For example in *Grosjean v. American Press Co.*, 297 U.S. 233, this Court held unconstitutional a state statute imposing a licensing tax on the privilege of engaging in the business of selling advertising upon the publishers of all newspapers or magazines having a weekly circulation of more than 20,000 copies.

In *Lovell v. Griffin*, 303 U.S. 444, 450, 452, this Court held unconstitutional an ordinance prohibiting the distribution of literature without permission from the City Man-

³⁸ Our comments on the effect and reach of the statute in this and succeeding sections of the brief are predicated on this Court having ruled, before reaching these constitutional issues, that expenditures for public dissemination of union views on particular candidates are barred by the statute. We shall not trouble the Court by repeating this caveat each time we refer to the statute.

ager. Freedom of speech and freedom of the press, the Court pointed out, "are among the fundamental personal rights and liberties" protected by the Constitution. The Court emphasized, moreover, that:

"The ordinance cannot be saved because it relates to distribution and not to publication. 'Liberty of circulating is as essential to that freedom as liberty of publishing; indeed, without the circulation the publication would be of little value'. *Ex Parte Jackson*, 92 U.S. 727."

In *Martin v. Struthers*, 319 U.S. 141, this Court held unconstitutional as violative of freedom of speech and freedom of the press a city ordinance making it unlawful for any person distributing handbills and similar literature to ring the doorbell or otherwise summon the inmate of a residence to the door.

In *Thomas v. Collins*, 323 U.S. 516, this Court invalidated a state statute requiring paid labor union organizers to register with the Secretary of State and secure an organizer's card before soliciting members within the State.

In *Hague v. CIO*, 307 U.S. 496, this Court held invalid a city ordinance requiring a license for the conduct of public meetings.

In *Saia v. People of State of New York*, 334 U.S. 558, this Court struck down a New York ordinance forbidding the use of sound amplification devices except by permission of the Chief of Police. The decision stressed (p. 562) that, in balancing community interests, the judiciary should be mindful "to keep the freedoms of the First Amendment in a preferred position".

In *Terminiello v. Chicago*, 337 U.S. 1, this Court held unconstitutional a city ordinance construed to prohibit as

disorderly conduct any speech which "stirred people to anger, invited public dispute or brought about conditions of unrest" as an unconstitutional derogation of the civil rights of those who wished to speak even to the point of inviting public dispute.

In *Kunz v. New York*, 340 U.S. 290, this Court held "clearly" invalid an ordinance which made it unlawful to hold public worship meetings on the street without first obtaining a permit from the city police commissioner.

In *Niemotko v. Maryland*, 340 U.S. 268, this Court held unconstitutional the practice by which permits were issued for public and religious meetings in a park in Havre de Grace, since there were no adequate standards for the issuance of the permits. This resulted in a discriminatory refusal to grant a permit to Jehovah's Witnesses, in violation of their right to equal protection of the laws in the exercise of First Amendment rights.

And recently this Court held invalid a state statute granting a state board the power to refuse to license "sacriligious" films. *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495. See also *Superior Films v. Department of Education of Ohio*, 346 U.S. 587.

First Amendment freedoms have thus been protected from legislative restraint by the imposition of taxes, by registration and license requirements, by the regulation of distribution of various kinds of literature and regulation of sound amplification devices, and by censorship. All these restraints, with the possible exception of the last, are milder, less direct and less serious in their implications to free democratic discussion than the outright prohibition imposed by the statute before the Court.

In its various applications of First Amendment protections, this Court has deemed it an indispensable safeguard of free political institutions and democratic political processes to protect from mere Governmental licensing and

regulation the freedom of expression of extremists and dissenters and the like. How much closer then to the protection of those institutions and processes, how much more directly involved is the First Amendment, when Congress totally prohibits the expression of political views in pending elections by all of the great labor unions of the land? In one stroke the primary organized representatives of 20 million laboring men and their families are denied the power of persuasion in the protection of their own interests and that of their members. If the First Amendment is to have any significant and continuing vitality, it cannot protect ineffectual expression of extremist views only to stop short when speech threatens to assert actual influence on political affairs and political power. If organized persuasion at polling time is indeed a political practice that can be banned, then the historic decisions of this Court have served to make the First Amendment not a great bastion which preserves our institutions but merely a haven for socially doubtful and politically ineffective thoughts and expressions.

D. No Valid Justification Has Been Offered for the Prohibition of Union Political Expression

The presumption in favor of rights under the First Amendment requires those who support this statute to justify it by a clear showing of the need for the particular legislation. We believe that the required justification cannot be made.

Congress itself gave little indication of the evils at which it was aiming during the enactment in 1947 of what is now Section 610. The lack of discussion in the hearings and reports prior to the passage of the Labor-Management Relations Act results in there being very little evidence as to the particular dangers which Congress may have felt made this outright prohibition necessary. We turn now

to an examination of the Government's attempted justifications.

1. "Undue Influence" and "Purity of Elections"

The Government speaks of the "undue influence" of labor unions in federal elections (*Brief*, p. 52). But no evidence has been or can be adduced to show that labor unions have in fact spent a disproportionately high amount in connection with elections. As we discuss hereafter (see *infra*, pp. 91-98), labor's expenditures run far below its proportionate share based on voting population. Significantly, this very point appears from the Congressional investigations preceding enactment of Section 610, which were relied upon in the debates on Section 610 and by the Government in the court below.

In the reports of the four Congressional committees between 1944 and 1947 which studied union political expenditures there is not a single word nor suggestion of "disproportionate" or "undue" union expenditures or influence.³⁹ Far from indicating undue influence, the committee reports prior to 1947 actually indicate the contrary. That labor organizations enjoy disproportionately little financial influence on federal elections is indicated clearly by the figures compiled and published by the Green Committee. S. Rep. No. 101, 79th Cong., 1st Sess. The Committee tabulated both total expenditures and labor expenditures

³⁹ See *Report of Special Committee to Investigate Presidential, Vice-Presidential and Senatorial Campaign Expenditures, 1944* (S. Rep. No. 101, 79th Cong., 1st Sess.); *Report of the Special Committee to Investigate Campaign Expenditures, House of Representatives, 1944* (H. Rep. 2093, 78th Cong., 2d Sess.); *Report of the Special Committee to Investigate Senatorial Campaign Expenditures, 1946* (S. Rep. No. 1, Pt. 2, 80th Cong., 1st Sess.); and *Report of the Special Committee on Campaign Expenditures, 1946, to the House of Representatives* (H. Rep. No. 2739, 79th Cong., 2nd Sess.). Nor was there any suggestion of undue influence in the reports on the bill which became Section 610.

in the 1944 elections.⁴⁰ This report (p. 79) shows an expenditure of more than 20 million dollars by Democratic and Republican organizations and committees in the 1944 elections.⁴¹ For the same election the report shows (p. 23) expenditures by the CIO-PAC and the NC-PAC of 1.3 million dollars, to which must be added \$250,000 expended by other unions (as indicated in Appendix IV to the Report, pp. 102-121) for a total labor expenditure of 1.6 million dollars.⁴² Thus, dividing the total political expenditures at the Federal and State levels by labor's expenditures in 1944 shows that labor organizations, using both union dues and contributions, accounted for only 7% of the total Republican and Democratic expenditures.

Another striking example of labor disadvantage is found in this same report. In the same 1944 election, 242 individuals who represented 64 family groups, made direct contributions totalling \$1,277,121. Green Report, *supra*, Appendix VIII (pp. 140-151). Thus expenditures on behalf of many millions of workers only slightly exceeded contributions made by 64 families.

Not only does the argument of disproportion or undue

⁴⁰ It should be noted that it was in the 1944 campaign that labor made its greatest expenditures to that date (see p. 102, *infra*).

⁴¹ The actual figure indicated as spent, at page 79 of the report, is \$20,633,177. However, as the report indicates, this total excludes the bulk of expenditures by local and county organizations and also omits expenditures for candidates for the House of Representatives. See also Overacker, *Presidential Campaign Funds, 1944*, in 39 American Political Science Review 899 (1945).

⁴² The actual total is \$1,580,257.10. Of this sum, \$252,481.18 was expended by other unions as indicated in Appendix IV. The expenditures, tabulated at page 23, are as follows:

EXPENDITURE FROM UNION CONTRIBUTION TO CIO-PAC	\$ 478,499.82
EXPENDITURE FROM INDIVIDUAL CONTRIBUTIONS TO CIO-PAC	470,852.32
EXPENDITURE BY NC-PAC	378,424.78

TOTAL

\$1,327,775.92

Cf. *Regulation of Labor's Political Contributions and Expenditures: The British and American Experience*, 19 University of Chicago Law Review 371, n. 28, n. 106.

influence find no basis in the legislative history preceding enactment of Section 610, but the foregoing figures indicate how little labor unions spent in proportion to their numbers prior to the enactment of Section 610. There is no showing, either legislative or otherwise, nor can there be, that labor unions were ever in a position to exercise disproportionate or undue influence on federal elections. On the contrary, labor's political expenditures run far below its proportionate share based on voting population. This less than proportionate, rather than excessive, participation is hardly an evil requiring correction by a complete prohibition of labor union political activity. Indeed, true respect for our fundamental democratic processes would seem to require that labor union participation in political processes be encouraged rather than restricted.

Perhaps nothing attests more effectively to the weakness of the undue influence contention than the Government's dropping of the argument made on this point in the court below and its bare passing reference to the contention here.⁴³ In its place, the Government now shifts to an argument based on the protection of the "purity of elections," an argument not previously offered as now made in any of the four prosecutions under Section 610 and one which, as far as we are aware and as far as anything in the Government's brief indicates, is nowhere contained in the legislative history.

We are somewhat at a loss to answer the Government's argument on purity of elections for it is less an argument than a potpourri of disparate considerations. In so far as the Government is concerned with the "unwilling participants" (*Brief*, p. 53) in the union's activities, we deal with this contention in our answer to the Government's argument on "minority protection" (see pp. 64-70, *infra*). In so far as the Government is concerned that political expenditures

⁴³ See *Brief for the United States*, p. 52.

by unions "deprive the elective process of that individualism which is a necessity of democratic government" (*Brief*, p. 56), we suggest that, if this statement adds anything to the minority protection argument, it only indicates the acceptance by the Government of that very concept of atomization which Mr. Justice Rutledge so well answered in his concurring opinion in the *CIO* case. 335 U.S. at p. 147. In so far as the Government is concerned (*Brief*, p. 54) with the fact that "the public is never adequately apprised as to the actual constituent voting strength of the entity," certainly a disclosure statute, rather than a prohibition statute, would be the only constitutionally-appropriate remedy. *Cf. United States v. Harriss*, 347 U.S. 612. In so far as the Government is concerned with the political activities of an "artificial entity", the contention appears to be a holdover from the argument below analogizing corporations and labor unions. But whatever may be the legal situation with respect to corporate political action, the differences in labor union political activity are readily apparent.⁴⁴ Finally, in so far as the Government is concerned with the "reciprocal obligations of the political candidates" (*Brief*, p. 55), this adds little, if anything, to the undue influence argument already answered; furthermore, no instances in connection with unions where elections have been rendered impure, where fraud or corruption have resulted or where improper use of expenditures has been made, were before Congress when it passed Section 610.

Neither the undue influence contention nor the purity of elections contention, standing alone or taken together, support the prohibition on the expression of union views.

2. Minority Protection

The burden of the Government's argument in justification

⁴⁴ See n. 74, p. 100, *infra*.

of Section 610 rests on the view that the statute was aimed at the possibility that there might be a minority of union members who objected to support of particular candidates and whose funds, in the form of union dues, were misused for such support. This conclusion, too, fails as a support for the statute.

All labor union activity is group activity, and the right of workers to participate in such group activity has been recognized in every quarter.

In *Gompers v. Bucks Stove & Range Co.*, 221 U. S. 418, it was said (at p. 439):

"Society itself is an organization and does not object to organization for social, religious, business and all legal purposes. The law, therefore, recognizes the right of working men to unite and invite others to join their ranks, thereby making available the strength, influence, and power that come from such association."

And again in upholding the validity of the National Labor Relations Act, this Court said (*N. L. R. B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 33, 34):

"That is a fundamental right. Employees have as clear a right to organize and select their representatives for lawful purposes as the respondent has to organize its business and select its own officers and agents . . . Fully recognizing the legality of collective action on the part of employees in order to safeguard their proper interests, we said that Congress was not required to ignore this right but could safeguard it."

Labor unions are associations of individuals operating on the principle of majority rule. This Court has said of that principle that it is "a rule that 'is sanctioned by our Governmental practices, by business procedure, and by the whole philosophy of democratic institutions'." *N. L. R. B. v. A. J. Tower Co.*, 329 U.S. 324, 331. The principle has been

upheld even where, unlike the instant case, the rule of the majority is imposed by governmental action rather than the voluntary act of the individual. See, e.g., *J. I. Case Co. v. N. L. R. B.*, 321 U.S. 332.⁴⁵

In recent years the need for labor's participation in politics has been accentuated by the increased extent to which actions of government affect the economic life of all segments of the population. The same considerations which underlay the trade union movement, those realities which required helpless individuals to take concerted action against the powerful employer, require the individual in politics to associate with others in order to achieve that representation and promote those political views which in turn protect his economic interests. The other interests in our national life, as we point out more fully in Point V of this brief, are organized in strength. Union members must act politically with their organized strength to insure that their views will receive an adequate hearing from the public and from those who make legislative and executive policy.

This authorized and traditional political activity by unions affords the answer to the contention that minority members of the union need protection against use of their dues for political purposes. Labor organizations have for many years been an important element in the political

⁴⁵ The Government's reliance upon *Steele v. Louisville & Nashville Railroad Co.*, 323 U.S. 192, and the cases following it, is misplaced. In those cases the majority, in collective bargaining, sought to give the seniority rights of the minority to the members of the majority. Here the majority seeks, by political action, to protect the rights of all members of the union. The fact that a minority may disagree with the majority action is hardly the equivalent of the deliberate discrimination against the minority in the cases relied upon. Indeed, it is clear that the minority right protected in *Steele* and the succeeding cases is merely the right to have the majority *fairly* represent the entire group. Those cases are an affirmation rather than a denial of the principle of majority rule.

scene. Appellee has taken an active part in elections since its formation. Its Constitution has authorized that activity. Like all other activities of the union, it is a group activity governed by the majority rule principle. That principle, as the district court in *United States v. CIO*, 77 F. Supp. 355, pointed out (p. 358), "is recognized in the very statute of which the Labor-Management Relations Act containing this Section 304 is an amendment". That principle governs all of American life; community and group activity by their very nature are based on majority rule.

Every action taken by a labor union requires that individual dissenting views be subordinated to group views. This is true with respect to all aspects of collective bargaining decisions. This is true with respect to all aspects of legislative decisions. Certainly majority rule is no less appropriate to decisions having to do with the expenditure of union funds in the political arena, where majority rule is the essence of the electoral process.

In *DeMille v. American Federation of Radio Artists*, 31 Cal. 2d 137, 187 Pac. 2d 769, *cert denied*, 333 U.S. 876, the Supreme Court of California applied this majority rule principle to the closely-related legislative use of labor union funds. There the court pointed out that (at p. 150):

"Majority rule necessarily prevails in all constitutional government. . . . In a government based on democratic principles the benefit as perceived by the majority prevails . . . the principles involved and applicable to the facts are not new. Here novelty is present only in the assertion that the proper use of association funds may be avoided by a member who is committed to a minority view. Other organizations, such as medical associations, bar associations, and the like, have used their funds to support favorable legislation or defeat measures considered in the opinion of the majority or its duly authorized representatives to

be inimical to the public interest or to its own welfare. It has never been considered that a difference of opinion within the association as to the use of association funds for such purposes, where otherwise lawful, was a matter for judicial interference."

Nor would there appear to be any reason to distinguish majority rule in the field of legislative activity from majority rule in the field of political activity. In the case of union political activity, union efforts are directed at electing persons pledged specifically or generally to certain legislative objectives. In the case of union legislative activity, union efforts are directed at persuading persons already elected to enact or oppose these same pieces of legislation. If minority protection justifies prohibiting the union's expression of views on candidates, it would seem equally to justify prohibiting the expression of its views on legislation. And, by the same token, if minority protection fails to justify prohibition of the union's expression of its views on legislation, it could no more justify the prohibition of the expression of its views on candidates pledged to carry out or oppose such legislation.

Thus, the justification for the prohibition on collective action which is tendered here must fail; for in a great democratic union of states it cannot well be argued that a basic evil inheres in great democratic unions of working men. The only political system which preserves the untrammelled right to dissent for which the Government argues is anarchy. The price of the unanimity rule in political systems, just as in group political advocacy, is total impotence. The price which the Government levies for the "freedom" of union members from being bound by group decision in matters of political advocacy is the removal of union power to protect the interests of its members by public persuasion in the political arena.

But appellee is not required to defend the principle of

majority rule in this case. *The even simpler answer to the Government's contention is that Section 610 is not directed at the protection of the minority, for it applies whether or not there is any minority and whether or not that minority is willing to allow the majority decision to be implemented.* Indeed it is not clear whether the minority which the Government seeks to protect consists of persons who would have chosen a different candidate but are content to allow the majority decision to be implemented or consists of persons who not only oppose the choice of a candidate but also oppose the implementation of the majority decision. Whatever the Government's position may be, the statute fails to make any such distinctions or in any way to deal with the problem of minority protection.

The statute applies even where the expenditures are made by unanimous decision of the union membership. The statute applies even where, though some members might have a different choice of candidates, all members support the union in implementing the majority decision.⁴⁶ The statute applies in areas where the union shop does not exist or where, if the union shop does exist, all workers belonged to the union prior to the inauguration of the union shop or subsequently joined without reference to the union shop.⁴⁷

⁴⁶ Minorities are not fixed but fluid. A union member may oppose one candidate supported by his union and strongly champion another. Because, in the long run, the group represents his own interests, the member may very well be prepared to see the majority act even though in a particular instance he would have acted differently. There is no allegation in the indictment that all members of appellee union do not support the union in implementing the majority decision.

⁴⁷ From August 1947 to October 1951 the Labor-Management Relations Act required the affirmative vote of the majority of workers both union and non-union before a union shop provision could be negotiated with the employer. During these years the NLRB conducted 46,119 authorization polls of which 44,795, or 97.1 percent, resulted in authorization. Of the more than 5½ million votes cast on this issue, over 5 million—91 percent of those voting—chose to have a union shop. The complete tabulation appears in the *Sixteenth Annual Report of the National Labor Relations Board for the Fiscal Year Ended June 30, 1951*, Appendix B, Table 9A, p. 301, entitled "Results of union-shop authorization polls conducted Aug. 22, 1947-Oct. 22, 1951".

Finally, the statute applies even where the union allows dissenting members to contract out from the fund supporting the expression of union political views.⁴⁸

It is thus clear that, aside from the fact that there is nothing improper in a minority of union members being bound by the decision of the majority, Section 610 is not directed at the protection of the minority.⁴⁹ It is neither addressed nor limited to the protection of any actual minorities, but rather prohibits all group action. Neither its context nor the debate prior to its enactment warrants the suggestion that the statute is anything less than a broadside assault on the freedom of political expression guaranteed by the First Amendment.

E. The Statute Is Not Restricted to the Elimination of the "Evils" Offered As Justification For Prohibiting Union Political Advocacy

Section 610 completely fails to meet the test which has been established for legislation impinging on First Amendment rights, that the statute must be narrowly drawn to deal with the precise evil which the legislature is seeking to curb. *Joseph Burstyn, Inc. v. Wilson*, *supra*, at p. 504; *Wieman v. Updegraff*, 344 U.S. 183, 190-191; *Cantwell v. Connecticut*, 310 U.S. 296; *Schneider v. State of New Jersey*, *supra*; *De*

⁴⁸ This is now the case in appellee union. Under the UAW Constitution, 5 cents of each member's monthly dues goes into a Local Union Citizenship Fund and 5 cents goes to the Citizenship Fund maintained by the International Union. It is these citizenship funds which are utilized to express the union's views on political candidates. Recently the UAW International Executive Board voted to allow any member so desiring the right to have the portions of his dues earmarked for Local Union and International Union Citizenship Funds diverted to a non-partisan organization such as the American Heritage Fund devoted to promoting greater citizenship activity. See *United Automobile Worker*, August, 1956.

⁴⁹ It is this consideration which distinguishes the legal limitations placed on union political expenditures by Great Britain, New South Wales and Western Australia relied upon by the Government (*Brief*, p. 62).

Jonge v. Oregon, supra. Recently this Court has applied that principle and upheld a regulatory statute affecting First Amendment rights only after restricting it by a limited interpretation contrary to that proposed by the Government. *United States v. Harriss*, 347 U.S. 612. In ruling on the validity of the Lobbying Act as an exercise of the power to maintain the integrity of basic governmental processes, this Court upheld the Act only as restricted by its interpretation to those who actually solicited or received contributions for the purpose of directly communicating with Congress. It indicated that it would not have so held if the statute had been interpreted to conform literally with its broader language to include all who made expenditures to influence Congress. The statute as interpreted was held constitutional only because "Congress has used . . . power in a manner restricted to its appropriate end" (at p. 626). The "manner" which Congress had chosen to meet the evil of lobbying was registration and publicity, not complete prohibition; yet this Court found it necessary to limit by interpretation the effect of that regulation because of possible impairment of freedom of speech and of the right to petition Congress.

It seems clear that the broadside interdiction of political activity which Section 610 imposes cannot be said to be the "appropriate" manner in which to deal with the supposed evil of labor's political activity. If the evils at which Section 610 is aimed are those which the Government has suggested—undue influence of labor unions, impurity of elections, and disregard of minorities in the union—this legislation on its face is not sufficiently narrowly drawn. It prohibits irrespective of the presence or absence of such "evils"; it does not regulate.

The comment of this Court in another case involving the

failure of the legislative body to limit the restriction of freedom to specific abuses is particularly appropriate here. In *De Jonge v. Oregon*, *supra*, at pp. 364, 365 the Court said:

"The people through their legislatures may protect themselves against . . . abuse [of free speech or press]. But the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed."⁸⁰

F. The Proscribed Conduct Is Not Clearly Defined

The final test which this Court has evolved in its scrutiny of statutes in the area of First Amendment rights is that the conduct which is sought to be eliminated must be sufficiently definitely described so that the statute does not jeopardize the free exercise of rights outside the area of permissible or intended restraint and so that it will prevent the possibility of discrimination in enforcement which an unclear statute might involve. *Winters v. New York*, 333 U.S. 507, 509-10; *Cantwell v. Connecticut*, 310 U.S. 296; *Thornhill v. Alabama*, 310 U.S. 88; *Herndon v. Lowry*, 301 U.S. 242; *Stromberg v. California*, 283 U.S. 359. As fully discussed in Point VI, *infra*, pp. 104-110, the limits of the present statute are so vague as to be unascertainable.

Where a statute involving the fundamental right of political expression is involved, its vagueness may result in far more harm than in the case of an ordinary criminal statute. Two evils result from the vagueness: (a) the exercise of political rights which may actually be outside the statute is effectively restrained and (b) there is an opportunity for

⁸⁰ Neither this Court nor appellee has the obligation to suggest the outlines of permissible legislative action in this highly sensitive field. Congress made no attempt to limit the provisions of Section 610 to any evils, real or fancied, simply laying down the rule, in Senator Taft's words, that "labor unions are supposed to keep out of politics" (93 Cong. Rec. 6440). Having failed to limit the statute and having gone beyond regulation and into prohibition, Congress exceeded permissible limitations on First Amendment rights.

discrimination in enforcement, which we think is best illustrated by the fact that no case involving allegations of unlawful "expenditures" has ever been brought against a corporation.

This Court has expressed its awareness of the possible results of vagueness in a statute involving the exercise of free political discussion. In *Stromberg v. California*, *supra* (at p. 369), the Court stated:

"The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system. A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guarantee of liberty contained in the Fourteenth Amendment."

And in *Jones v. Opelika*, 316 U. S. 584,⁵¹ the Court recognized the other possible evil result of the vagueness of the statute in that it provided an opportunity for discriminatory and unfair application. The Court noted that the record showed that the license fee imposed by the statute in that case had been required of members of Jehovah's Witnesses but not of other ministers and stated at page 617:

"We need not shut our eyes to the possibility that use may again be made of such taxes, either by discrimination in enforcement or otherwise, to suppress the unpalatable views of militant minorities such as Jehovah's Witnesses . . . As the evidence excluded in No.

⁵¹ The dissenting opinions were later adopted by the majority in 319 U.S. 103.

280 tended to show, no attempt was there made to apply the ordinance to ministers functioning in a more orthodox manner than petitioner."

See also *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 504-5.

The interpretations of Section 610 by the courts in the cases which have arisen under it have hardly served to render the statute less vague, and cannot be relied on in any sense as clarification. The process of exclusion by individual cases has left labor unions with no clear definition of their rights to participate in political activities. They have no opportunity to express their views on candidates except by running the risk of prosecution under a statute lacking in ascertainable standards marking the line between permitted and forbidden expression of union views.

G. Cases Arising Under This and Similar Statutes Have Held Such Statutes to Be Unlawful Abridgments of First Amendment Freedoms

In summary, Section 610 not only violates guiding principles which have been developed to insure the continued vitality of the First Amendment, but also runs afoul of the decided cases under this and similar statutes.

The Supreme Judicial Court of Massachusetts has unanimously declared, in an advisory opinion, that a proposed state statute⁵² strikingly similar to Section 610 was incon-

⁵² The proposed law provided:

"No corporation carrying on the business of a bank, trust, surety, indemnity, safe deposit, insurance, railroad, street railway, telegraph, telephone, gas, electric light, heat, power, canal, aqueduct, or water company, or any company having the right to take land by eminent domain or to exercise franchises in public ways, granted by the commonwealth or by any county, city or town, no trustee or trustees owning or holding the majority of the stock of such a corporation, no business corporation incorporated under the laws of or doing business in the commonwealth, no officer or agent acting in behalf of any corporation men-

sistent with the rights of freedom of the press, freedom of speech and peaceable assembly. *Bowe v. Secretary of the Commonwealth*, 320 Mass. 230, 69 N. E. (2d) 115.

The opinion of the courts is precisely applicable to this case:

"The liberty of the press is enjoyed, not only by individuals, but also by associations of individuals such as labor unions (*Hague v. Committee for Industrial Organization*, 307 U. S. 496) and even by corporations, although a corporation is not a 'citizen' and must find its protection against abridgement of its liberty by State action in the due process clause rather than the privileges and immunities clause of the Fourteenth Amendment. *Grosjean v. American Press Co., Inc.*, 297 U. S. 233, 243, 244. Compare *Western Turf Association v. Greenberg*, 204 U. S. 359, 363; *Hague v. CIO*, 307 U. S. 496, 527, and for an appreciation of the divergence in the authorities, *Independent Service Corp. v. Tousant* (Dist. Mass.), 56 Fed. Sup. 75, 78. See also Rutledge, J., in *May Department Stores Co. v. National Labor Relations Board*, 326 U. S. 376, 404.

"One of the chief reasons for freedom of the press is to insure freedom, on the part of individuals and associations of individuals at least, of political discussion of men and measures, in order that the electorate at the polls may express the genuine and informed will of the people. Brandeis, J., in *Whitney v. California*, 274 U. S. 357, 375; Hughes, C. J., in *Stromberg v. California*, 283 U. S. 359, 369. *Individuals seldom*

tioned in this section, and no labor union, or any person acting in behalf thereof shall directly or indirectly give, pay, expend or contribute, any money or other valuable thing in order to aid, promote or prevent the nomination or election of any person to public office, or to aid, promote or antagonize the interests of any political party, or to influence or affect the vote on any question submitted to the voters." (Emphasis added.)

impress their views upon the electorate without organization. They have a right to organize into parties, and even into what are called 'pressure groups' for the purpose of advancing causes in which they believe. They have a right to engage in printing and circulating their views, and in advocating their causes in public assemblies and over the radio. All this costs money, and if all use of money were to be denied them the result would be to abridge even to the vanishing point any effective freedom of speech, liberty of the press, and right of peaceable assembly.

"It remains to apply these principles to the proposed law under discussion. We do not doubt that labor unions, like individuals, may be curbed by corrupt practices acts and prevented from dumping immense sums of money into political campaigns. But under the proposed law the political activities of labor unions are not regulated or curbed but are substantially destroyed. Deprived of the right to pay any sum of money for the rental of a hall in which to hold a public rally or debate, or for printing or circulating pamphlets, or for advertising in newspapers, or for buying radio time, a union could not carry on any substantial and effective political activity. It could not get its message to the electorate. Its rights of freedom of the press and of peaceable assembly would be crippled . . ." (Emphasis added.)

In holding that this very statute, Section 610, is unconstitutional, the district court, in *United States v. CIO*, 77 F. Supp. 355, in its unreversed judgment dismissing the indictment, said (at p. 357):

"I am of opinion that the questioned portion of Section 304 of the Act is an unconstitutional abridgment

of freedom of speech, freedom of the press and freedom of assembly. At no time are these rights so vital as when they are exercised during, preceding or following an election. If they were permitted only at times when they could have no effect in influencing public opinion, and denied at the very time and in relation to the very matters that are calculated to give the rights value, they would lose that precious character with which they have been clothed from the beginning of our national life."

On the direct appeal from this judgment, the majority of this Court entertained "the gravest doubt" (*United States v. CIO, supra*, at p. 121) of the constitutionality of the statute if construed broadly.⁵³ Four Justices of this Court, unable to go along with the majority's restrictive interpretation avoiding the constitutional issues, thoroughly analyzed those issues in an opinion by Mr. Justice Rutledge and held that the statute was clearly unconstitutional.

The opinion discussed each one of the constitutional principles which have been treated in this Point III and upheld appellee's contentions in each instance.

The same fundamental view that First Amendment rights are of the highest importance in connection with the electoral process moved the four concurring Justices. They said (p. 143-144):

"The expression of bloc sentiment is and always has been an integral part of our democratic electoral

⁵³ The Court of Appeals for the Second Circuit in the *Painters Local* case entertained these same doubts, adding that, in view of the Supreme Court decision, the constitutional question was no longer "one of first impression." 172 F. 2d at p. 857. Likewise, the district court in the *General Laborers'* case, *supra*, was troubled by the constitutional problems raised by a broad interpretation of the statute.

and legislative processes. They could hardly go on without it. Moreover, to an extent not necessary now to attempt delimiting, that right is secured by the guaranty of freedom of assembly, a liberty essentially coordinate with the freedoms of speech, the press, and conscience. *Cf. Bowe v. Secretary of the Commonwealth*, 320 Mass. 230, 251, 252, 69 N.E. 2d 115. It is not by accident, it is by explicit design, as was said in *Thomas v. Collins, supra*, 323 U.S. at page 530, that these freedoms are coupled together in the First Amendment's assurance. They involve the right to hear as well as to speak, and any restriction upon either attenuates both. . . . The most complete exercise of those rights is essential to the full, fair and untrammelled operation of the electoral process. To the extent they are curtailed the electorate is deprived of information, knowledge and opinion vital to its function."

The Justices viewed the statute as a complete prohibition and direct restraint (p. 146):

"Here the restriction in practical effect is prohibition, not regulation, when it is considered with respect to the objects of suppressing corruption and 'undue influence.' It is not a limitation, it is a prohibition upon expenditure of union funds in connection with a federal election. Unions can act and speak today only by spending money, as indeed is true of nearly every organization and even of individuals if their action is to be effective."

This complete prohibition in the area of First Amendment rights, the opinion pointed out, must be justified by its proponents (pp. 144-45):

"It is this very difference, of course, which brings into play the First Amendment's prohibitions and the principles giving them presumptive weight against intrusions or encroachments upon the area the Amendment reserves against legislative annexation. It is this difference, the very fact that the restriction seeks to contract the boundaries of expression and the right to hear previously considered open, which forces upon its authors the burden of justifying the contraction by demonstrating indubitable public advantage arising from the restriction outweighing all disadvantages, thus reversing the direction of presumptive weight in other cases."

But, the opinion went on, that justification had not been made with respect to either of the alleged evils, either that of undue influence or of minority dissent.

With respect to the first alleged evil, Mr. Justice Rutledge stated (p. 145):

"If therefore it is an evil for organized groups to have unrestricted freedom to make expenditures for directly and openly publicizing their political views and information supporting them, but *cf. Bowe v. Secretary of the Commonwealth, supra*, 320 Mass. at page 252, 69 N. E. 2d at page 130, it does not follow that it is one which requires complete prohibition of the right. *Ibid.* That is neither consistent with the Amendment's spirit and purpose, *ibid.*, nor essential to correction of the evil, whether it be considered corruptive influence or merely influence of undue or disproportionate political weight."

The opinion also stressed that, as to the second alleged evil of minority dissent, the statute (p. 149):

"... rests upon the presumption that the majority are out of accord with their elected officials in political

viewpoint and its expression and, where that presumption is not applicable, it casts the burden of ascertaining minority or individual dissent not upon the dissenters but upon the union and its officials. The former situation may arise, indeed in one notable instance has done so. But that instance hardly can be taken to be a normal or usual case. Unions too must often operate under the electoral process and the principle of majority rule. Nor in the latter situation does it seem reasonable to presume dissent from mere absence of explicit assent, especially in view of long-established union practice."

Lastly, the opinion concluded that the statute failed to meet the test of the corollary principles which the Court had developed in connection with statutory restrictions on First Amendment freedoms (pp. 141-142):

"Apart from the question whether the same argument might not be applicable to all other powers granted to Congress by the Constitution, to destroy the principles stated for securing the preferential status of the First Amendment freedoms, the argument ignores other equally settled corollary principles. These are that statutes restrictive of or purporting to place limits to those freedoms must be narrowly drawn to meet the precise evil the legislature seeks to curb, *Cantwell v. Connecticut*, 310 U.S. 296; *Thornhill v. Alabama*, 310 U.S. 88; *Schneider v. State*, 308 U.S. 147; *De Jonge v. Oregon*, 299 U.S. 353; *Saia v. New York*, 334 U.S. 558; and that the conduct proscribed must be defined specifically so that the person or persons affected remain secure and unrestrained in their rights to engage in activities not encompassed by the legislation. Blurred sign-posts to criminality will not suf-

fice to create it. *Cantwell v. Connecticut*, *supra*; *Stromberg v. California*, 283 U.S. 359; *cf. Thomas v. Collins*, 323 U.S. 516; *Winters v. New York*, 333 U.S. 507.

“Section 313 falls far short of meeting these requirements, both in its terms and as infused with meaning from the legislative history. This is true whether the section is considered in relation to one or another of the evils said to be its targets or with reference to all of them taken together.”

We submit that Section 610 is invalid. A similar state statute has been held invalid by the highest court of Massachusetts, grave doubts of the statute's constitutionality have been expressed by this Court, and four concurring Justices of this Court have expressly held that the statute impairs civil rights in violation of the First Amendment. We respectfully submit that Section 610 unlawfully abridges appellee's rights and the rights of its members under the First Amendment.

IV

Section 610 Unlawfully Abridges the Right of Appellee and Its Members to Choose Congressional Representatives, Guaranteed by Article I, Section 2, of and the Seventeenth Amendment to the Constitution

If this Court should reach this constitutional point, it will of necessity have decided that the trade union activity prohibited by the statute is virtually all union activity directly related to the outcome of federal elections. Such a blanket prohibition unlawfully abridges the constitutional right of appellee and its members to choose their Congressional representatives.

The provisions of Article I, Section 2, and of the Seventeenth Amendment to the Constitution specifically confirm

the right of the people to elect Congressmen and Senators. Article I, Section 2, provides that "the House of Representatives shall be composed of members chosen . . . by the people of the several states." By the Seventeenth Amendment it was provided that "the Senate . . . shall be composed of two Senators from each State, elected by the people thereof." This right of the people to choose their congressional representatives is thus firmly established as a federal constitutional right; by virtue of these constitutional provisions, although the qualifications of voters are determined by the states, the right of qualified voters to choose their congressional representatives is given federal constitutional protection. *Ex Parte Yarborough*, 110 U. S. 651; *Wiley v. Sinkler*, 179 U. S. 58; *Swafford v. Templeton*, 185 U. S. 487; *United States v. Mosely*, 238 U. S. 383; *United States v. Classic*, 313 U. S. 299; *United States v. Saylor*, 322 U. S. 385; *Smith v. Allwright*, 321 U. S. 649. The authoritative statement of this principle was made by Mr. Justice Stone, writing for the majority in *United States v. Classic* (313 U. S. at p. 314):

"Section 2 of Article I commands that Congressmen shall be chosen by the people of the several states by electors, the qualifications of which it prescribes. The right of the people to choose . . . is a right established and guaranteed by the Constitution and hence is one secured by it to those citizens and inhabitants of the state entitled to exercise the right."

The record of the adoption and the ratification of the Constitution fully supports the conclusion of this Court, as stated in *United States v. Classic*, *supra*, at page 316, that "the free choice by the people of representatives in Congress . . . was one of the great purposes of our constitutional scheme of Government. . . ." The principle of popul.

election of the House of Representatives was debated at several points by the Constitutional Convention and consistently prevailed (II Elliot, *Debates at the Federal Convention*, pp. 136 *et seq.*, 160 *et seq.*, 223 *et seq.*). Madison considered popular election "as essential to every plan of free government" (*id.* at 137), and the primary importance of popular election of the House was emphasized to the voters considering ratification of the proposed Constitution in many issues of the Federalist papers (See Nos. 47, 52, 53, 55 and 57). Choice by the people was pointed to as the safeguard against tyranny and treachery by the Congress (No. 55).

With the adoption of the Seventeenth Amendment, the election of Senators became an equal organ with the election of members of the House for the expression of the free choice of the people.

The scope of the electoral rights created by the Constitution has been indicated in a series of cases, determining the extent of federal power to protect the electoral process. These cases arose under the Civil Rights statutes, which provide remedies for private or governmental action impairing constitutionally secured rights (18 U.S.C. §§ 241, 242; 42 U. S. C. §§ 1981, 1983). The decisions recognize federal power, under Article I, Section 4, to *protect* rights arising from Article I, Section 2. Beginning with *Ex Parte Yarborough*, *supra*, the courts have held the following to be attributes of the right to vote which Congress may protect, either by application of criminal sanctions or provision for civil relief:

- (i) The right to vote, either in a general election or in a primary which is an integral part of the electoral process (*Ex Parte Yarborough*, *supra*; *Wiley v. Sinkler*, *supra*; *Swafford v. Templeton*, *supra*; *Smith v. Allwright*, *supra*).

(ii) The right to have the force of the vote protected against ballot stuffing (*United States v. Saylor*, 322 U.S. 385; *Ledford v. United States*, 155 F. 2d 574 (CA 6) *cert. denied*, 329 U.S. 733) or against the votes of unqualified voters (*United States v. Wilson*, 72 F. Supp. 812 (W.D. Mo.)).

(iii) The right of a qualified voter to register (*United States v. Ellis*, 43 F. Supp. 321 (D.S.C.)).

(iv) The right to sit on an election board, or to act as judge, inspector or poll clerk at an election for Congressman or Senator (*United States v. Aczel*, 219 Fed. 917 (D. Ind.)).

Thus the courts have recognized that the constitutional right to choose is not an empty phrase, but a guaranty of the right of "effective choice" (*United States v. Classic*, *supra*, at p. 314). The constitutional right of a qualified voter to make an effective choice of Congressional representatives requires more than mere protection of the mechanics of the casting and counting of ballots; it requires group political action.

Section 610 establishes a most dangerous departure from the American tradition of group political activity. As Mr. Justice Rutledge stated with respect to Section 610 in the *CIO* case, *supra*, at p. 147, "the accepted principle of majority rule which has become a bulwark, indeed perhaps the leading characteristic, of collective activities is rejected in favor of atomized individual rule and action in matters of political advocacy...." Manifestly, a nation of 160 million people cannot maintain effective democratic government if every individual voter must act alone. It is only through association in groups in which the individual accepts the principle of majority rule that he can further his general economic interests and hope to achieve any political effectiveness in our complex modern society. As the Massachusetts court

observed in the *Bowe* case, *supra*, effective election rights must include the right of persons "to organize into parties, and even into what are called 'pressure groups' for the purpose of advancing causes in which they believe" for "individuals seldom impress their views upon the electorate without organization."

It has always been recognized that in joining political parties or groups and associations which engage in political activity, the dues and contributions of the member must often go to support individual candidates to whom the member in question is opposed. For instance, a southern contributor to the National Democratic Party might vigorously oppose the expenditure of part of his contribution to support liberal northern candidates while an isolationist contributor to the Republican Party might object to the use of his contribution for the support of candidates who endorse the Eisenhower-Dulles foreign policy. But the individual who joins such a group discounts this evil because he believes that the overall group purposes further his own interests. This group political activity is an American political tradition which antedates the Constitution itself. Section 610 abandons the system of majority rule and group activity and necessitates "atomized" and ineffective methods of political advocacy.

It is submitted that our tradition of group political activity embodies a fundamental constitutional right. It is too late for Congress to attempt to rewrite the political history of the United States by trying to pattern American elections along individual, atomized lines. As Mr. Justice Black stated in the *United Public Workers* case:

"Legislation which muzzles several million citizens threatens popular government, not only because it injures the individuals muzzled, but also, because of its harmful effect on the body politic in depriving it of the

political participation and interest of such a large segment of our citizens. . . . I think the Constitution prohibits legislation which prevents millions of citizens from contributing their arguments, complaints, and suggestions to the political debates which are the essence of our democracy; prevents them from engaging in organizational activity to urge others to vote and to take an interest in political affairs. . . . Such drastic limitations on the right of all the people to express political opinions and take political action . . . would violate, or come dangerously close to violating, Article I and the Seventeenth Amendment of the Constitution, which protect the right of the people to vote for their Congressmen and their United States Senators and to have their votes counted. . . ." (330 U. S. 75, 111).⁵⁴

Section 610, as here interpreted, prohibits traditional group political activity at election time in all its aspects. Expenditures may well be barred for urging full participa-

⁵⁴ These words were written in the dissenting opinion in *United Public Workers v. Mitchell*, 330 U.S. 75, where the majority upheld certain Hatch Act prohibitions of political activity by federal employees. But the majority opinion, far from rejecting the quoted language, accepted Mr. Justice Black's premise that the statute invaded areas of traditional political freedoms. The Court stated at pp. 94-95, "we have a measure of interference by the Hatch Act and the Rules with what otherwise would be the freedom of the civil servant under the First, Ninth and Tenth Amendments." However, the Court went on to uphold the prohibitions on campaign activities as an exercise of federal power to preserve the efficiency of the public service.

Furthermore, the Hatch Act safeguards the very right denied by Section 610. It provides "*all such persons shall retain the right to . . . express their opinions on all political subjects and candidates.*" 5 U.S.C. 118 i(a). And in *Mitchell*, *supra* at 94, the conduct this Court held prohibitable was not expression of political views but the circumstance that a federal employee "was a ward executive committeeman of a political party and was politically active on election day as a worker at the polls and a paymaster for services of other party workers." The presently pertinent infirmity of Section 610 is its failure to make the vital differentiation specifically embodied in the Hatch Act.

tion in federal elections, for educating union members and the public in voting procedures, for transporting members and the public to the polls and for investigating and publicizing election abuses and irregularities at the polls. Union officials may not take even the direct steps of protecting the integrity of the electoral processes by watching at the polls, if they do so while on union salary or in any official capacity. Thus, the whole series of practical political activities which would help to insure that the choice by union members of their Congressional representatives be effective is prevented by this reading of the statute. Section 610 abandons that effective group political action which has been at the foundation of the political history of this country.

We submit that Congressional power to guard the free exercise of the civil rights of voters cannot be converted into Congressional power substantially to destroy or impair them. Yet, this is the immediate effect of this statute on the freedom of working men and women to protect their interests as union members. It deprives union members of their primary organized means of protection of their interests in many of the most important political issues of the day.

Millions of working men and women who have laboriously built up their union over a period of many years for the purpose, among others, of political activity have been forced to discard their only effective means of political action. The statute thus directly restricts those political processes which can ordinarily be expected to bring about repeal of undesirable legislation, referred to by Mr. Justice Stone in *United States v. Carolene Products Co.*, 304 U. S. 144, n. 4, and which must be given the widest possible scope in order to preserve truly democratic government.

The Prohibition of Union Expenditures in Connection With a Federal Election Is an Arbitrary Discrimination Which Deprives Unions and Their Members of Liberty Without the Due Process of Law Guaranteed by the Fifth Amendment

With the sole exception of the prohibition on labor union election expenditures, Congress has never enjoined associations of individuals formed to promote common interests from expending funds in federal elections.⁵⁵ Associations

⁵⁵ Of course, the statute is applicable to corporations. However, all apart from the fact that a corporate ban cannot be utilized to justify a ban on trade unions (see n. 74, p. 100, *infra*), the startling fact is that the prohibition on corporate expenditures has never been enforced and is in fact unenforceable. As stated by one authority, the "only part of American corrupt practices acts that anyone makes a show of enforcing is that relating to union contributions." Key, *Southern Politics*, 480 (1949). Individual gifts by corporate officials and their families are a simple method of avoidance of the prohibition, for the laws requiring reporting of expenditures and contributions are not adequate to identify such individual contributions with the corporate interests they reflect. See Overacker, *Presidential Campaign Funds*, 69 (1946). A recent survey of the subject, *How to Give Money to Politicians* by Duncan Norton-Taylor, *Fortune*, May 1956, p. 113, 238, states that "corporations just duck around" the law:

"They cover up contributions by listing them in various expense accounts. The boss's secretary appears as the purchaser of blocks of tickets to \$100-plate dinners. Executives contribute handsomely to campaign chests with the understanding that they will get their money back in bonuses."

See also McKean, *Party and Pressure Politics*, 352-353 (1949); Merriam and Gosnell, *The American Party System*, 406-407 (1949). Furthermore, "public interest" advertisements have become a favorite method for corporate tax deductible aid to candidates by means such as the paraphrasing of a candidate's speeches or slogans. See, for instance, 239 *Printers Ink* No. 2, p. 17 (Apr. 11, 1952); Advertisement, *New York Times*, Oct. 15, 1952, p. 21 by Standard Steel Spring Company. Tax deductible corporate contributions are often accomplished through "good will" advertisements in party journals and publications at some county or state committee dinner.

Despite these widespread practices there has never been a single indictment for violation of the corporate expenditure prohibition.

of farmers, doctors, lawyers and others are left free to spend general funds in federal elections. The same is true of employer, manufacturer and business groups such as Chambers of Commerce or the National Association of Manufacturers. Beyond those groups, countless numbers of veterans', fraternal, educational, public service, and community associations and the like are left free to spend general funds in elections. The statute thus singles out unions while all other unincorporated associations are left unrestricted.⁵⁶

A. Discriminatory Laws Violate Due Process Guaranties

Those who wrote our Bill of Rights were acutely aware of the need for a constitutional guarantee against discriminatory legislation for they had recently suffered under arbitrary, punitive laws. The due process guarantee of the Fifth Amendment therefore prohibits arbitrary and discriminatory governmental action. This Court, in *Hurtado v. California*, 110 U.S. 516, 535-6, gave great emphasis to this historic safeguard. In the course of a comprehensive examination of due process guaranties the Court declared:

“... every citizen shall hold his life, liberty, property and immunities under the protection of the general rules which govern society, and thus, excluding, as not due process of law, acts of attainder, bills of pains and penalties, acts of confiscation, acts reversing judgments, and acts directly transferring one man's estate to another, legislative judgments and decrees, and other similar *special, partial and arbitrary exertions of power* under the forms of legislation.” (Emphasis added.)

⁵⁶In *Thomas v. Collins*, 323 U.S. 516, 539, this Court stated that “the right either of workmen or of unions . . . to assemble and discuss their own affairs is as fully protected by the Constitution as the right of businessmen, farmers, educators, political party members or others to assemble and discuss their affairs and to enlist the support of others.”

Recently, in *Bolling v. Sharpe*, 347 U.S. 497, this Court held that segregation of whites and Negroes in District of Columbia schools was an arbitrary and discriminatory classification which deprived Negro students of "liberty" in violation of the Fifth Amendment's due process clause. This decision was preceded by numerous declarations by the Court that, notwithstanding the absence of an equal protection clause in the Fifth Amendment, its guarantee of due process would forbid patently arbitrary or discriminatory legislation. *Nichols v. Coolidge*, 274 U.S. 531, 542; *Steward Machine Co. v. Davis*, 301 U.S. 548, 585; *Curran v. Wallace*, 306 U.S. 1, 13-14; *Detroit Bank v. United States*, 317 U. S. 329, 338; *Hirabayashi v. United States*, 320 U. S. 81, 100; *Mabee v. White Plains Publishing Co.*, 327 U.S. 178, 184; *United States v. Kahriger*, 345 U.S. 22, 33-34; *Cf. Grosjean v. American Press Co.*, 297 U.S. 233, 250-251. In the *Bolling* case (*supra*, at p. 500), the Court stated: "In view of our decision that the Constitution prohibits the states from maintaining racially segregated public schools [because of the Fourteenth Amendment's equal protection clause], it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government." *Cf. Herd v. Hodge*, 334 U.S. 24, 35-36. Thus, in effect, the due process clause now appears to bar discriminatory federal laws as completely as the equal protection clause of the Fourteenth Amendment prohibits discriminatory state legislation.

Although this Court has frequently ruled on the validity of discriminatory laws, the difficulties inherent in the problem have prevented formulation of precise distinctions between "arbitrary and discriminatory" legislative classifications, which are forbidden, and legislative classifications which merely fail to "cover the whole field", which are un-

objectionable.⁵⁷ It is clear, however, that legislation is discriminatory when it singles out one among a group composed of those "similarly situated" where

(1) The class singled out is injured or restricted in the enjoyment of rights and privileges, and

(2) There is no fair reason to exempt others similarly situated, or

(3) The legislative motive is to penalize those singled out for restriction.

Measured against these standards, Section 610 must fall as discriminatory legislation prohibited by the Fifth Amendment.

B. Section 610 Falls As Discriminatory Legislation

1. *The prohibition against labor union expenditures is especially injurious because opponents of labor who already enjoyed undue political power were thereby given further political advantage*

A discriminatory law must, of course, cause injury to those discriminated against before due process guarantees are violated. But injury occurs whenever individuals are restricted in the enjoyment of activities they might otherwise have pursued. As the Court stated in *Bolling v. Sharpe*, *supra*, at p. 499:

"Although the Court has not assumed to define 'liberty' with any great precision, that term is not confined to mere freedom from bodily restraint. Liberty under law extends to the full range of conduct which the individual is free to pursue . . ."

⁵⁷ For an analysis of the cases and a suggested rationale of this difficult distinction see Tussman and tenBroek, *The Equal Protection of the Laws*, 37 California Law Review 341.

Since political elections are often adversary contests of strength, discriminatory laws which restrict political rights inflict unusually severe injury on the group subject to the discrimination. Thus, Congress has tremendously increased the political strength of those opposed to labor by selecting only labor unions for restrictive legislation, while associations of management and employers⁵⁸ and other groups traditionally opposed to labor in the political arena, are left completely unfettered. Yet studies show that labor election expenditures have been far smaller than those of business elements opposed to labor. Twenty million organized workers and their families, representing a major segment of the total population, have contributed less than 10% of all campaign funds. On the other hand, employer and employer-minded groups representing a tiny fraction of the population are the major source of funds for federal campaign expenditures.⁵⁹ Assets of wealthy families often support anti-labor candidates. Members of one family alone, the Duponts, regularly contribute about a hundred thousand dollars during election campaigns.⁶⁰

⁵⁸ When this favoritism was attacked at the time of the Senate debates on the predecessor to Section 610, the Smith-Connally Act, Senator Hatch stated on the Senate floor, with the agreement of Senator Connally, that it was necessary to: "bring into the same class as labor organizations the employer organizations such as the United States Chamber of Commerce and the National Association of Manufacturers. If one is to be denied the privilege of making political contributions, the other should be also." Senator Hatch promised to introduce a bill to carry out his statement (89 Cong. Rec. 5721). Pursuant to this promise, Senator Hatch introduced a bill to accomplish such restriction on employer groups on the very day the Senate passed the Smith-Connally Act over Presidential veto (89 Cong. Rec. 6503). The bill passed the Senate (90 Cong. Rec. 1643) but not the House.

⁵⁹ See Overacker, *Presidential Campaign Funds*, 13-16, and compare Table IV, p. 34 with Table V, p. 59.

⁶⁰ See, e.g., Senate Report No. 47, 79th Cong., 1st Sess.; Senate Report No. 101, Appendix VIII, 79th Cong. 1st Sess.; 9 Cong. Quarterly News Features, Weekly Reports, pp. 612-614 (April 1951). And see p. 62, *supra*.

Furthermore, employer-minded groups have influence often verging on control of the media of mass communication, a control used against labor in the opinion influencing processes.⁶¹ Employer, business and management groups enjoy tremendous political advantage by the use of almost unlimited corporate funds expended as part of the cost of doing business. These millions used to saturate public opinion necessarily have tremendous impact on the selection and election of candidates. These funds, derived from widespread ownership of securities and sales of merchandise to the public, are used to promote business interests and propagandize against the interest of labor and labor unions. For instance, in 1950 the astounding fact was revealed by the General Motors Corporation that it had given to tax-exempt propaganda outfits and trade associations more than 4½ million dollars between 1947 and 1950.⁶² This sum exceeds the *total* Democratic campaign expenditures in the 1950 elections as reported by 12 Democratic campaign committees and all Democratic Congressional candidates.⁶³ Corporations likewise sponsor advertising and radio and television commentators who help mould popular opinion.

The 4½ million dollars expended by General Motors must be multiplied hundreds of times to include similar contributions by thousands of other corporations. The result gives some indications of the staggering political advantage, as compared with labor unions, enjoyed by business

⁶¹ See, e.g., *A Free and Responsible Press, A Report of the Commission on Freedom of the Press* (1947); Stewart, *Radio Commentators and Free Speech*, 14 *Common Sense* 32 (Aug., 1945); Chase, *Sound and Fury*, 128-129 (1942); Hays, *Civil Discussion Over the Air*, 213 *Annals* 37, 44 (1941); *Freedom in the Opinion Industries* in Lerner, *Ideas Are Weapons* (1939); Lasswell, *Democracy Through Public Opinion* (1941).

⁶² See House Report No. 3137, 81st Cong., 2d Sess., "*Expenditures by Corporations to Influence Legislation*"; Cong. Q. Almanac 763 (1950).

⁶³ 9 Cong. Q. News Features, pp. 421, 422 (1951).

elements who control expenditure of vast corporate funds.⁶⁴ It is this great disproportion that points up how important it is to labor to be able to use its limited union funds for the expression of labor's viewpoint directly in the elections "at the most crucial point where the expression would become effective" (See *United States v. CIO*, *supra*, at p. 150).

A recent description of the practices which permit business and management groups to use corporate power and

⁶⁴ The use of the tremendous publicity power of anti-labor groups was given striking illustration by Senator Aiken during the debates on the Taft-Hartley Act. The Senator, a supporter of the Taft-Hartley Bill, stated on the floor of the Senate on May 12, 1947 (93 Cong. Rec. 5015-5017):

"It is a wonder that Members of the Senate can hold their tempers and vote on the bill according to their best judgment, because we have been subjected to the most intensive, expensive, and vicious propaganda campaign that any Congress has ever been subject to. I do not refer to the propaganda campaign of the labor unions, although I hold no brief for that. I refer to a propaganda campaign which has cost well into the millions of dollars. I should not be surprised if the total amount spent in this campaign would amount to at least \$100,000,000. I told the Senate last spring that the single March advertising campaign in the newspapers against labor by the National Association of Manufacturers cost \$2,000,000, and that statement has not been contradicted as yet, although it was made a year ago. This propaganda campaign has been conducted through letters to the press; it has been conducted through radio commentators whose services have been for hire by various organizations. It has been conducted through speakers sent everywhere in the United States where they could get an opportunity to expound the antilabor doctrine. . . . This propaganda campaign has been carried on through corporations which have circularized their stockholders, asking them to write to Members of Congress favoring the House bill and opposing any mild bill. . . . If the conference committee undertakes to do to the bill what certain organizations, including the Chamber of Commerce of the United States, the National Association of Manufacturers, and the Committee for Constitutional Government, Inc., wish to have done to it, such a bill should not become law, and the President would be fully justified in vetoing it. . . ."

Actually, for 1947, the year of the passage of the Taft-Hartley law, the NAM reported expenditure of over four million dollars in what appear to be propaganda-connected activities. Cong. Q. Reports, 1948, p. 268. See Gable, *NAM—Influential Lobby or Kiss of Death?*, 15 Journal of Politics 254 (1953).

position for political purposes and against the interests of labor comes from a pamphlet published in September 1956 by the National Association of Manufacturers: "*Organized Labor's Program to Organize the Legislative Halls.*" At p. 14 thereof the following advice is given management:

"Corporations, of course, cannot make political contributions. Besides the federal ban, corporations are barred from political donations—for any office—in every one of the 48 states.

"But there are other ways in which management of industrial and business concerns can participate. Some are:

Urging employees to register and vote.

Discussing broad political issues in company publications.

Permitting political candidates to tour plants and business establishments.

Encouraging members of management staff to engage in practical politics.

"Individuals have greater freedom and should exercise it, both in regard to contributions and activity in behalf of candidates who will be free agents."

A striking illustration which highlights the impact of Section 610 is found in the 1949-1950 pre-election activities of the American Medical Association. These activities were designed to defeat the Truman medical insurance program, a plan vigorously supported by labor.⁶⁵ The AMA campaign started early in 1949. To bolster its general funds the AMA imposed a special \$25 assessment on every mem-

⁶⁵ See Hyde & Wolff, *The American Medical Association: Power, Purpose and Politics in Organized Medicine*, 63 Yale Law Journal 938, 1012-1017, for a detailed history of the AMA campaign.

ber in order to get a "political war chest to fight socialized medicine" in the coming election.⁶⁶ By this means, more than 3½ million dollars was made available for pre-election use. The funds were used for an extensive propaganda campaign during the months preceding the November elections. Finally, during a two-week period just before the 1950 elections the AMA spent \$1,100,000 for an anti-health-insurance message carried nationwide in 10,000 newspapers, 30 national magazines and over 1000 radio stations.⁶⁷ The fight was concentrated in areas where friends of health insurance legislation were running for election.⁶⁸ County and local medical societies made direct contributions to candidates⁶⁹ and widespread distribution was given to medical society endorsements of favored candidates. These activities were supplemented by those of supposedly independent healing arts groups. The doctors' organizations thus helped to defeat numerous labor-supported Congressmen who favored the health insurance program.⁷⁰ After the election the President of the AMA announced that in the light of the recent campaign "any compulsory health insurance bill in Congress today would go down to defeat by at least a 2 to 1 vote." 144 JAMA 1269 (1950). This was accomplished in substantial part by the use of general

⁶⁶ New York Times, Dec. 2, 1948, p. 32 col. 2; id., Dec. 3, 1948, p. 20, col. 1. For expenditure of the fund see 9 Cong. Q. News Features, Weekly Reports, 565, 578-9 (April 1951).

⁶⁷ See New York Times, Nov. 26, 1950; "Are the People Listening?", address by Clem Whitaker, Director, National Education Campaign, American Medical Association, delivered before the second annual Southern Public Relations Conference, Tulane University, May 8, 1951; Nation's Business, September, 1950, p. 2; Hyde & Wolff, *op. cit. supra*, n. 65.

⁶⁸ See Lewis, *New Power at the Polls*, in January 1951 issue of "Medical Economics," p. 73.

⁶⁹ 9 Congressional Quarterly News Features, p. 424-425 (March 1951).

⁷⁰ See editorial in December 1950 issue of "Medical Economics," p. 57; Lewis, *op. cit. supra*, n. 58.

funds and assessments of a professional association, membership in which is virtually indispensable to the successful practice of medicine.⁷¹

The AMA campaign of 1950 illustrates the effective use of large campaign funds immediately before an election for the defeat of labor-supported candidates when labor unions cannot enter the battle with union funds. And the use of general funds and membership assessments permitted AMA, but forbidden to labor unions, is a privilege likewise enjoyed by management associations who consistently oppose labor in political elections.

An additional example of discrimination might well be highlighted for the Court at this juncture. The district judge, on his own initiative, raised the question of the patent discrimination in favor of newspapers (R. 29). The Government readily conceded that newspapers, even where incorporated, were exempt from the prohibitions of Section 610 (R. 29). The district court referred to the fact that 90 or 95 percent of the newspapers seemed to be on one side (R. 29) and this, of course, is the opposite side from labor. In most areas the only newspapers in the community will be publicly campaigning against the candidate supported by labor and will be in a position not only to make themselves heard but also to prevent the voice of labor from being heard in their news columns. Every reason urged for application of the expenditures prohibition to labor unions applies with at least equal force to newspapers, which almost uniformly add their weight to the business side in opposition to the labor point of view. Appellee union is second to none in defending the right of a newspaper to campaign in favor of even the candidates labor most

⁷¹ A fully documented survey of legal and economic sanctions against doctors who are not members of AMA appears in *The American Medical Association: Power, Purpose and Politics in Organized Medicine*, by Hyde & Wolff, 63 Yale Law Journal 938, 948-953 (1954).

opposes. The statute, however, leaves labor unions defenseless to answer this campaigning.

Section 610 severely limits effective representation of labor interests in Congress by restricting only labor union election expenditures, and this discriminatory legislation has given further political power to anti-labor groups already unduly powerful far beyond their numbers. This is a most serious tangible injury to unions and their members which deprives them of liberty guaranteed by the Fifth Amendment.

2. Justifications of the prohibition of election expenditures by unions are lacking in any sound policy basis not equally applicable to other associations of individuals

Whether application of restrictive legislation to only one of a group or class amounts to arbitrary governmental action depends on whether the selection is "reasonably related to any proper governmental objective" (*Bolling v. Sharpe, supra*, at p. 500) or, as Mr. Justice Holmes stated in *Missouri v. May*, 194 U. S. 267, 269, the question is whether there is a "fair reason for the law that would not require with equal force its extension to others whom it leaves untouched."

There are two potential governmental objectives which have been tendered in support of Section 610. They are (a) the avoidance of the undue influence of unions and the maintenance of the purity of federal elections, and (b) the prevention of the involuntary use of union dues of members of one political party to support the candidate of an opposing party.

Undue influence could not be a valid ground for the legislation because, while union expenditures amounted to less than 10% of total campaign expenditures prior to 1947, expenditures by business groups regularly amount to the

largest share of total election contributions. The wealth of this latter element presented and continues to present a far more dangerous disproportionate influence on federal elections than the limited assets of labor unions representing twenty million voters.⁷²

Thus if "undue influence" be the reason for the statute, there are those left untouched by it who exercise a much more undue or disproportionate influence than do labor unions. To the extent that some unions have sizeable funds available for political activity, this represents merely the size of their membership and it cannot be that political activity may be restricted to only small groups of individuals. Thus neither the actual nor potential influence of unions presents a fair reason for prohibiting their political expenditures any more than the mere size of the group would justify prohibiting political expenditures by any other group in the country. The same is true of the Government's present argument as to "purity of elections." Their theory applies with equal vigor to every other group in the country not organized purely for political purposes. If elections are to be kept "pure" by prohibiting multi-purpose organizations from engaging in politics, certainly this cannot be done by selecting only unions for such a "reform".

The Government also relies on the claim that because of certain compulsions to join labor unions, a prohibition on election expenditures by unions is necessary to prevent the dues of working men from being used against their wishes in support of candidates to whom they are opposed. This argument, however, is equally applicable to others whom the statute leaves untouched. There are, of course, economic and social motivations which impel union membership. A worker, though he may not agree that his dues are being used to support candidates most friendly to labor

⁷² See *supra*, pp. 61-63, 91-98.

and labor interests, may nevertheless, in view of such economic and social motivations, determine to remain in the union. But the same is true of many other associations of individuals whether they be those of farmers, doctors, lawyers, businessmen or the stockholders of a daily newspaper.⁷³ There are comparable economic and social motivations which impel men to join agricultural, professional or business associations, if not, indeed, political organizations.⁷⁴

⁷³ See, e.g., n. 71, p. 97, *supra*.

⁷⁴ It has at times been asserted that the discrimination against labor unions is offset by a like ban on corporate election expenditures. The argument assumes the validity of the prohibition on expression of corporate political views. But see opinion of Mr. Justice Rutledge in the *CIO* case at pp. 154-155. In any event, it is management and business associations, not corporations, which represent the counterpart to labor unions. Corporations are state-created entities deriving funds from widespread ownership and business activities. They are not associations of individuals formed to promote common group interests through social, educational, political and other means. The only common bond of the stockholders is their hope of profits; no remotely implied consent is given to the expenditure of these profits for election purposes. The majority rule in corporate decisions is the rule of the majority of stock voted, not the majority of individual holders. Nor does the buying public, which brings about these profits, have any common interest warranting political utilization of the profits they create. Unlike labor unions (see e.g., *Thomas v. Collins*, *supra*; *Thornhill v. Alabama*, 310 U.S. 88; *AFL v. Swing*, 312 U.S. 321), corporations do not enjoy constitutional liberties guaranteed to individuals and their associations. See e.g., *Bank of Augusta v. Earle*, 13 Pet. 519, 586 (U.S. 1839); *Blake v. McClung*, 172 U.S. 239, 259; *Hemphill v. Orloff*, 277 U.S. 537, 548; *Hague v. CIO*, 307 U.S. 496, 514; *Liberty Warehouse Co. v. Burley Tobacco*, 276 U.S. 71, 89; *Western Turf Association v. Greenberg*, 204 U.S. 359, 363.

Union members, unlike corporate stockholders, do have common social, economic and community interests requiring the common political action for which they have banded together. Thus, unions and corporations are not comparable entities with respect to the exercise of political activities. The bar against corporate expenditures cannot, therefore, offset the one-sided effect of a statute which leaves employer associations free while labor unions are restricted. Furthermore, as illustrated by the history of the AMA 1950 campaign, it is not enough that those *traditionally* opposed to labor be similarly restricted, for the exemption of the other myriad groups and associations may still result in tangible disadvantage to labor.

Furthermore, if social or economic pressures to join organizations are a sufficient basis for a federal bar on use of association funds for election expenditures, there are then no limits on potential curtailment of political rights, for the very association of individuals in groups bespeaks the presence of economic and social motivations. The importance of group political activity to the vigor of our electoral processes precludes recognition of social and economic pressures as a fair reason for prohibition of such activity.

It must, therefore, be concluded that no "fair reason" exists for the bar against labor organizations which would not compel similar prohibitions against other associations of individuals left unrestricted.

3. Section 610 was enacted because of Congressional animosity toward labor unions

Where legislative classification is challenged as discriminatory, this court will determine whether the legislature was motivated by improper bias or animosity.⁷⁵ The history of Section 610 illustrates that Congressional animosity toward unions and fear of labor's growing political strength, rather than any valid legislative purpose, were the bases of its enactment.⁷⁶ The American labor move-

⁷⁵ In *Yick Wo v. Hopkins*, 118 U.S. 356, 374, the Court struck down discriminatory state action stating: "the conclusion cannot be resisted, that no reason for [the discrimination] exists except hostility to the race and nationality to which the petitioners belong. . . ." In *Grosjean v. American Press Co.*, *supra*, at p. 250, the Court struck down a tax where "in the light of its history and of its present setting, it is seen to be a deliberate and calculated device in the guise of a tax to limit the circulation of information. . . ." See also *Truax v. Raich*, 239 U.S. 33, 40-41; *Mabee v. White Plains Publishing Co.*, 327 U.S. 178, 184; *cf. Guinn v. United States*, 238 U.S. 347.

⁷⁶ Significantly, the original prohibition contained in the Smith-Conally Act, 57 Stat. 168, 50 U.S.C. 1509 (1940 ed.), which barred union election contributions, was in a bill enacted on a wave of anti-union feeling

ment originated from the desire of workers to further their common objectives through economic and *political* action and there has been a tradition of American labor union political activity for over 100 years.⁷⁷ However, in the late 1930s, American labor unions began to be far more active in the political arena than previously. In the 1944 elections, labor was more effective and spent more money, especially through the CIO-PAC, than in any previous election. It was this growing activity of labor in promoting election of its candidates that provoked the enactment of Section 610.⁷⁸

Significantly Section 610 was not enacted as part of a bill dealing with electoral reform or control of election expenditures but as a part of what may well be characterized as the most thorough-going and far-reaching anti-labor legislation in our national history. An examination of the legislative history of Section 610 illustrates that its enactment had no real considered basis other than hostility to labor unions. First, the committees which reported out the Taft-Hartley bill did not have a single witness before them who testified on the question of union political expenditures. Secondly, the committee reports which reported favorably on this unprecedented restriction on political activity did

arising from activities of certain unions during the war, which were in no way related to union political expenditures. The prohibition was the product of that sentiment rather than the desire for electoral reform. See Tanenhaus, *Organized Labor's Political Spending*, 16 *Journal of Politics*, 441; 443-5.

⁷⁷ See *The Labor Movement in the United States, 1860-1895*, by Norman J. Ware, Chap. 17; *Labor in America*, by Foster Rhea Dulles; David, *100 Years of Labor in Politics*, The House of Labor, 90; Daugherty & Parrish, *The Labor Problems of American Society*, 231, 239 (1952); Reynolds, *Labor Elections and Labor Relations*, 99-104 (1940); Chang, *Labor Political Action and the Taft-Hartley Act*, 33 *Nebraska Law Review* 554.

⁷⁸ See Overacker, *Presidential Campaign Funds*, Ch. III; Kallenbach, *The Taft-Hartley Act and Union Political Contributions and Expenditures*, 33 *Minnesota Law Review* 1,

not contain one single word in justification or explanation of the proposed ban. Thirdly, none of the Congressional debates in which this section of the bill was discussed indicated any actual abuses or corruption by labor unions with respect to their political expenditures.

A reading of the Congressional debates compels the conclusion that, rather than being a considered remedial measure intended to prevent some actual abuse, Section 610 was merely thrown in as an additional restriction on labor. There can be little question that it was added "for good measure" when labor was down in a losing struggle. Professor Tanenhous, whose work is cited repeatedly in the Government's Brief here, concluded therein (16 Journal of Politics 441 at 467) :

"Section 9 of the War Labor Disputes Act and section 304 of the Labor Management Relations Act were, this writer believes, motivated primarily by the desire to weaken materially labor's ability to influence public policy to its advantage. With rare exception, the most vocal sponsors of prohibitions on union spending were Congressmen with records conspicuous for hostility toward organized labor."⁷⁹

⁷⁹ In view of the great preponderance of union support for Democratic rather than Republican candidates, it is interesting to observe that this ban on union election expenditures was enacted by Republican support over Democratic opposition. The bill was sponsored by Republicans, drafted primarily by an attorney paid by the Republican National Committee (see pp. 1160-1201 of Hearings of a Subcommittee of the Committee on Education and Labor of the House of Representatives on H.R. 2032, 81st Cong., 1st Sess.), and enacted over a Democratic President's veto. In the Senate, the veto was overridden by 48 Republicans and 20 Democrats, opposed by 3 Republicans and 22 Democrats, and in the House by 225 Republicans and 106 Democrats, opposed by 11 Republicans and 71 Democrats. Senator Taft's remarks (93 Cong. Rec. 6437) during floor debate give further indication that Republican support for Section 610 was not uninfluenced by very practical considerations of political self-interest.

Mr. Justice Rutledge, writing for the four concurring Justices in *United States v. CIO*, *supra*, at p. 150, recognized the true legislative intent behind enactment of the prohibition on union election expenditures. He stated:

“ ‘minority protection’ was not the only or perhaps the dominant object of its enactment. That object was rather to force unions as such entirely out of political life and activity, including for presently pertinent purposes the expressions of organized viewpoint concerning matters affecting their vital interests at the most crucial point where the expression would become effective.”

Section 610 must fall as a “special, partial and arbitrary” exertion of legislative power directed against the effective political expression of the interests of millions of American labor union members.

VI

Section 610 Is Vague and Indefinite and Fails to Provide a Reasonably Ascertainable Standard of Guilt, in Violation of the Fifth and Sixth Amendments to the Constitution

It is elementary that a vague and indefinite criminal statute—i.e., one which fails to provide a reasonably ascertainable standard of guilt—violates the due process clause of the Fifth Amendment. *United States v. L. Cohen Grocery Co.*, 255 U.S. 81; *Connally v. General Construction Co.*, 269 U.S. 385; *Herndon v. Lowry*, 301 U.S. 242. The double basis for the requirement of certainty in the application of a criminal statute is the individual’s need for notice as to the standards of conduct which he must follow and the prosecutor’s need for an adequate guide in enforcing the law. Neither basis, as we shall show, is satisfied by Section 610. Under its terms, “men of common intelli-

gence must necessarily guess at its meaning and differ as to its application." *Lanzetta v. New Jersey*, 306 U.S. 451, 453.

In simplest terms the question at this point of our argument is this: Would a reasonably intelligent trade union official know whether he was violating Section 610 when he authorized a particular disbursement related in one way or another to a Presidential or Congressional election? To us the answer seems clearly in the negative and we turn to a few examples to support this answer.

1. Take first the word "expenditure". This Court, to reach this point at all, must have decided that the term "expenditure" in the statute forbids the payment by a union to a television station to cover the cost of broadcasting to its members and the public the union's views on a particular election. This Court would not, of course, have overruled its decision that the publication of the union's views in the union newspaper is not a violation of the statute; rather the Court would have had to decide that there was a distinction between the publication of the union's views in its own newspaper and the publication of its views in a commercial newspaper or on a commercial television station.

Any such interpretative line between a union publication and a commercial means of communication would raise for the union official attempting to comply with the statute far more questions than it would settle. The line between publication in a union newspaper and publication through a commercial newspaper or television station may be semantically meaningful; for practical working purposes it is meaningless. For example, under such a line of distinction, can a union distribute its union publication beyond the union membership? Can it put extra copies in conspicuous public places for the public to pick up and carry home? Can it send a copy of its publication to every resident in the

particular district by house-to-house distribution? Can it write a covering letter to each resident in the district forwarding this publication? And what of those unions which do not own a newspaper? May they mail a mimeographed statement on the candidates to every member of the union? Then, too, may a union that has a daily radio program utilize this means of expressing its views on candidates? Would it be different if almost all the listeners were members of the union? A majority? Half? Less than half?

On the reverse side of the coin, does the interpretation of the statute to prohibit payments for a commercial television broadcast make illegal all payments to make the union's views known to its members and the public (other than the publication of a union newspaper)? May the union pay President Walter Reuther's plane fare to California to make a political speech and tell the members of the UAW there and the public the views of the union on the candidates? If not, may President Reuther even utilize the time of employees of the union to mimeograph and circulate a press release containing those views? Would these and similar expenditures of all kinds fall within the union publication rule of the *CIO* case or on the other side of the line, namely that union funds may not be used for general distribution of union views to both members and public?

These questions arise daily during the present campaign. Appellee union has endorsed the national Democratic slate. Were the expenses of making this fact known to the public a violation of Section 610? Are the costs for overhead, salaries and travel in spreading the reasons for this endorsement a violation of the statute? Or are all efforts to get the union views into the newspapers and on television valid up to the point of purchasing newspaper advertising or television time?

More and more unanswerable questions arise once a dis-

inction is made between publication of the union's views through a union newspaper and publication through commercial channels. The UAW prepares pamphlets and leaflets on many subjects as a part of its regular union activity. May such a pamphlet or leaflet be prepared on a particular candidate, and if so, may funds be paid out for the distribution of such a pamphlet or leaflet to members of the union and/or to the public? Posters on various subjects are distributed to local unions for posting in union halls or neighborhood shops. May this be done for candidates? Meetings are often held in union halls on different subjects. May this be done for a particular candidate or are the expenses of such a meeting barred?

These are only the beginning of the questions that will arise if a line is drawn between a union newspaper and a commercial publication. We respectfully submit that once the principle suggested by appellee is rejected—namely, the principle that the term “expenditure” in the statute does not prevent a union from making its views on particular candidates known to its members and the public—there is no guide-post by which reasonable men can determine whether they are violating the law.⁸⁰ The term “ex-

⁸⁰ The Government suggests no interpretation of the statute and provides no guideposts for conduct under the statute. Instead, it arbitrarily carves out of the all-inclusive language of Section 610 a number of random exceptions whose sole bond appears to be that they would present even greater constitutional difficulties than the case at bar. Probably the most far-reaching of these exceptions is that for labor union activities based upon voluntary contributions rather than dues (*Brief*, p. 40), an exception which is nowhere indicated in the language of the statute. Likewise the Government carves out of the statute an exception for newspaper expenditures (R. 27-28) which is equally absent from the language of the statute. Furthermore, even the exception for expenditures “in behalf of State candidates” (*Brief*, p. 50) cannot be found in the language of the statute which prevents a labor union from making an expenditure “in connection with any election at which Presidential and Vice-Presidential electors or a Senator or Representative . . . are to be voted for”; on its face Section 610 would seem to apply to state

penditure" becomes a vague catchall, meaning different things to different people. Once the principle we have suggested is rejected, the statute becomes vague and indefinite and lacking in any reasonably ascertainable standard of guilt.

2. Actually the word "expenditure" is not the sole ambiguity in Section 610 and may not even be the most ambiguous phrase. The statute is so loosely drawn that it is uncertain what other normal union activities in the legislative and political field are proscribed. Take the words "in connection with any election". The relation in time to an election, primary or convention, within which partisan speech or action may be held "in connection with" the event, is wholly uncertain. Would union expenditures in 1955 directed toward a long range educational program designed to shape the outcome of the 1956 elections be proscribed? Would the preparation and distribution by the union of Congressional voting records demonstrating that certain legislators had more often served the interests of the laboring man and the public than certain others constitute an expenditure "in connection with" an election? Appellee's voting records are probably as complete and thorough as are compiled by any organization. We believe they are extremely carefully and accurately done. Yet the union's views of right and wrong, of pro-labor and anti-labor, of pro-public interest and anti-public interest, shine through every line and word. We may assume that some readers would consider these voting records as campaign documents helpful to the Democratic Party in 1956, al-

candidates selected at "any election at which" federal officers are elected. But the Government quite correctly recognizes the intent of Congress to except these categories in one way or another and this Court has added an additional excepted category in the *CIO* case. But no standard has been suggested by the Government or the courts to differentiate the categories excepted from the statute from those which the Government still asserts are within its prohibition.

though this was clearly not their sole or primary purpose. Is such a voting record prepared and distributed after the 1953 session of Congress a violation of the statute because it might affect the 1956 election? If not, is the voting record of the 1954 session a violation of the statute? Of the 1955 session? Of the 1956 session? Does the time factor determine the answer and, if not, what does determine it?

Labor's political activities are intertwined with its legislative and other governmental activities. Every criticism by a trade union of an administrative action of the government or a Congressional action or failure to act, has in it, expressly or impliedly, the suggestion of political action by the union and its members to support what the union believes right and oppose what it believes wrong. The intent to influence a forthcoming election in favor of persons whose views are generally favorable to labor and the public interest is always present in the publication of labor's views. In some instances the intent may be the primary one, in others a subsidiary one. Is the application of the statute to depend on whether the intent to influence an election one, two or five years off is primary or incidental? Obviously there can be no reasonably ascertainable standard of guilt under a statute that fails to provide answers to such fundamental questions.

3. A labor union operates in many ways—through collective bargaining, public education, legislation and elections. The full realization of the needs and aspirations of the trade union member and his family depends on educational, legislative and political activity no less than upon negotiations at the bargaining table. Activity in bargaining negotiations is interrelated with testimony before legislative bodies and political action to obtain friendly legislators. Pension plans which were won at the bargaining table supplement, and are supplemented by, social security

legislation achieved after decades of labor support; supplementary unemployment benefits, as the very name indicates, supplement unemployment compensation legislation; fringe benefits for health and welfare, including Blue Cross and Blue Shield, are directly related to labor's interest in federal health insurance; higher wages to be negotiated for workers in one plant may depend upon a legislative minimum wage preventing unfair wage competition at another plant. Thus labor's legislative and political activities are intertwined with its bargaining functions; the union official cannot keep these functions in pigeon-holes. Expenditures are often intended for several of these purposes at the same time; they are not and cannot be separated. To put the union leader at his peril in determining whether a particular "expenditure" is for one or the other of these complex purposes is to leave him without a reasonably ascertainable standard of guilt by which to guide his conduct.

VII

Conclusion

We believe we have shown to this Court that Section 610 impairs the rights of appellee and its members under the First Amendment at the very point where those rights are most zealously guarded by the Constitution and the courts in the interest of the fullest participation of all citizens in our democratic government and the continued vigor of the political processes upon which our free government depends. We believe, too, that we have shown that the statute unlawfully abridges the right of appellee and its members to choose Congressional representatives; that it constitutes an arbitrary discrimination against labor unions in violation of the due process clause of the Fifth Amendment; and that it fails to provide a reasonably as-

certainable standard of guilt in violation of the Fifth and Sixth Amendments. In short, we believe that the statute on its face and as applied to the appellee in this case is clearly unconstitutional.

Our burden, however, is not so great. It is not necessary for appellee to convince this Court of the unconstitutionality of the statute. It is necessary solely to convince the Court of the seriousness of the constitutional problems to be faced if the statute is not given the restrictive interpretation laid down by all the precedents to date. We believe that the review we have made of the constitutional issues demonstrates the wisdom of these precedents in restricting the statute in order to avoid passing upon these grave constitutional issues which lie at the very heart of our democratic society.

We respectfully urge that the judgment below be affirmed.

Respectfully submitted,

HAROLD A. CRANEFIELD,
8000 East Jefferson Avenue,
Detroit 14, Michigan.

JOSEPH L. RAUH, JR.,
1631 K. St., N.W.,
Washington, D. C.,
Attorneys for Appellee.

JOHN SILARD,
NORMA ZARKY,
KURT HANSLOWE,
REDMOND H. ROCHE, JR.,
Of Counsel.

SEPTEMBER, 1956.

REPLY

BRIEF

INDEX

	Page
I. In dismissing the indictment for failure to charge an offense, the district court did not narrow the scope of the indictment by construction but accepted it as written	1
II. The fact that there may be disputed issues under the indictment does not render it invalid.....	7
III. Section 610, if construed to cover the facts alleged in this indictment, is not unconstitutional.....	11

CITATIONS

Cases:

<i>Alabama State Federation of Labor v. McAdory</i> , 325 U.S. 450	19
<i>Boyce Motor Lines v. United States</i> , 342 U.S. 337.....	17
<i>Building Service Employees International Union v. Gazzam</i> , 339 U.S. 532.....	7
<i>Burroughs and Cannon v. United States</i> , 290 U.S. 534...	16
<i>Dennis v. United States</i> , 341 U.S. 494.....	8, 14
<i>Detroit Bank v. United States</i> , 317 U.S. 329.....	17
<i>Fox v. Washington</i> , 236 U.S. 273.....	14
<i>Giboney v. Empire Storage Co.</i> , 336 U.S. 490.....	7
<i>Helvering v. Lerner Stores Co.</i> , 314 U.S. 463.....	17
<i>Hirabayashi v. United States</i> , 320 U.S. 81.....	17
<i>Hughes v. Superior Court</i> , 339 U.S. 460.....	7
<i>International Brotherhood of Teamsters Union v. Hanke</i> , 339 U.S. 470.....	7
<i>LaBelle Iron Works v. United States</i> , 256 U.S. 377.....	17
<i>National Labor Relations Board v. Jones & Laughlin Steel Corporation</i> , 301 U.S. 1.....	19
<i>Screws v. United States</i> , 325 U.S. 91.....	16
<i>Steward Machine Co. v. Davis</i> , 301 U.S. 548.....	17
<i>Sunshine Coal Co. v. Adkins</i> , 310 U.S. 381.....	17
<i>United Public Workers v. Mitchell</i> , 330 U.S. 75.....	16
<i>United States v. Beacon Brass Co.</i> , 344 U.S. 43.....	7
<i>United States v. C.I.O.</i> , 335 U.S. 106.....	4, 5, 6, 7, 14
<i>United States v. Construction & General Laborers Local Union No. 264</i> , 101 F. Supp. 869.....	4
<i>United States v. Harriss</i> , 347 U.S. 612.....	14, 15

II

Cases—Continued

	Page
<i>United States v. Hood</i> , 343 U.S. 148.....	7
<i>United States v. Hoy</i> , 330 U.S. 724.....	7
<i>United States v. Painters Local Union No. 481</i> , 172 F. 2d 854	4
<i>United States v. Petrillo</i> , 332 U.S. 1.....	7, 20
<i>United States v. Ragen</i> , 314 U.S. 513.....	16
<i>United States v. Wurzbach</i> , 280 U.S. 396.....	15
<i>Winters v. New York</i> , 333 U.S. 507.....	14

Statute:

18 U.S.C. 610	4, 6, 10, 12, 13, 15
---------------------	----------------------

Miscellaneous:

93 Cong. Rec. 6439	18
93 Cong. Rec. 6440	18

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 44

UNITED STATES OF AMERICA, APPELLANT

v.

INTERNATIONAL UNION UNITED AUTOMOBILE, AIRCRAFT
AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA
(UAW-CIO)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

REPLY BRIEF FOR THE UNITED STATES

I

**In Dismissing the Indictment for Failure to Charge an Offense,
the District Court Did Not Narrow the Scope of the Indict-
ment by Construction but Accepted It as Written.**

This Court, on April 23, 1956, noted probable juris-
diction of this appeal in relation to the following ques-
tion specified in the Government's Statement as to
Jurisdiction (p. 3-4):

Whether offenses under 18 U.S.C. 610 are
charged in an indictment, each count of which al-
leges that on a specified date the defendant labor
union made an expenditure of a specified sum from

its general treasury fund, consisting of dues paid by members of the union, to defray the expenses of a particular political television broadcast sponsored by the defendant union over a commercial television station in which the defendant had no interest, which broadcast was intended to influence the electorate generally and urged and endorsed the election of certain candidates for United States Senator and Representative in Congress in the election held in Michigan in 1954.

Appellee contends that the Government's phrasing of the issue, which follows the language of the indictment, adopts a construction of the indictment at variance with that given by the district court. Appellee argues that the district court interpreted the indictment as charging only (Appellee's Br. 7, 18-19) "that appellee union paid for television programs 'to inform its members and others of the position of the Union on those seeking certain federal offices' ". This argument completely ignores the allegations of the indictment that the appellee "did knowingly and unlawfully make an expenditure from the general funds" of its treasury for television broadcasts in connection with specific elections, "urging and endorsing the selection of certain persons" as candidates, "which telecasts included expressions of political advocacy" intended "to influence the electorate generally" and "to affect the results of said primary election" (R. 2-6). On the premise that the indictment sought only to charge that appellee paid for television time "to inform its members and others of the position of the Union on those seeking certain federal offices" (Appellee's Br. 20), appellee argues that such payment does not constitute a political

“expenditure” within the meaning of 18 U.S.C. 610, and that “if such an expenditure is prohibited by 18 U.S.C. 610”, the statute violates various provisions of the Federal Constitution (Appellee’s Br. 2-3).

The opinion below cannot be read to emasculate the indictment in such manner and to assume an unalleged and unproved (though possible) set of facts. At the very outset of the opinion, the district court summarized all the allegations of the indictment (R. 36):

Here the specific charge is that the “expenditure” violation came in connection with the selection of candidates for a senator and representative to the United States Congress during the 1954 primary and general elections. It is alleged that defendant paid a specific amount from its general treasury fund to Luckoff and Wayburn Productions, Detroit, Michigan, to defray the costs of certain television broadcasts sponsored by the Union from commercial television station WJBK.

It is charged that the broadcasts urged and endorsed selection of certain persons to be candidates for representatives and senator to the Congress of the United States and included expressions of political advocacy intended by defendant to influence the electorate and to affect the results of the election.

It is further charged that the fund used came from the Union’s dues, was not obtained by voluntary political contributions or subscriptions from members of the Union, and was not paid for by advertising or sales.

The court then observed that for purposes of the motion to dismiss (R. 36) “the charges alleged are taken

as true", and that the "contention of [the appellee] is, first, that the expenditures, admittedly so made, are not the type of expenditures intended to be covered and prohibited by Section 610 of the Act." After reviewing the three cases involving statutory construction problems arising under Section 610 (*United States v. C.I.O.*, 335 U.S. 106; *United States v. Painters Local Union No. 481*, 172 F. 2d 854 (C.A. 2); *United States v. Construction & General Laborers Local Union No. 264*, 101 F. Supp. 869 (W.D. Mo.)), the court concluded (R. 44): "our decision is that under the authorities the 'expenditures' charged in this indictment are not expenditures prohibited by the Act" (emphasis added).¹ It is therefore apparent that the decision is based squarely on a finding that the whole indictment fails to charge a crime within the purview of 18 U.S.C. 610, and that the court did not attempt to construe, limit or reinterpret the indictment in any way.²

Appellee's contrary contention (Appellee's Br. 19) that "the district court's opinion construes the indictment as alleging expenditures for the purpose of a public expression of the union's political views" rests solely on the following excerpt from the district court's

¹ The order dismissing the indictment states in pertinent part (R. 45-46):

"* * * it is concluded that said motion should be granted and the indictment dismissed upon the ground that the expenditures charged in the indictment are not expenditures prohibited by law and that the indictment therefore fails to state facts sufficient to constitute an offense against the United States. * * *"

² From a reading of the briefs filed by the Government in the district court and an examination of the court's hearing on the motion to dismiss, it is also clear that there is no basis for appellee's contention (Appellee's Br. 15-17) that the Government concurred below in the construction of the indictment which appellee now urges.

opinion under the title "Conclusions of Law" and the subtitle "Effect of These Three Decisions" (R. 43):

According to the authorities the Union was not making an expenditure on behalf of a political candidate. It desired to inform its members and others of the position of the Union on those seeking certain federal offices. It was exercising the right to free speech. The question then might present itself as to whether or not what the Union did was in fact "make a contribution". This might be important if the Union were charged with "making a contribution". It is not. It was so charged in *United States v. Construction & General Lab. L.U. No. 264*, supra, on very similar facts, but still the court held that its acts did not encompass either a "contribution" or "expenditure".

It seems plain that this statement was not, in context, intended as a construction of the indictment, but was simply an observation that any political broadcast necessarily stated the position of the union and, therefore, reasonably involves "the right to free speech." The court was holding that, if the term "expenditure" were construed to include any acts involving "exercising the right of free speech" (R. 43), such "interpretation would bring into question the constitutionality of the section" under the authority of the three cases cited (R. 42).

In short, what the district court did was to look at the indictment and conclude that this must be a "speech" case. On the assumption that this Court's decision in *United States v. C.I.O.*, supra, required it to avoid the application of the statute to any instance

where a union expenditure was intended to express the views of a union (no matter what else was also involved), and overlooking the limitation of that holding to the particular facts spelled out in that indictment (i.e., expenditure for political advocacy in a "house organ" intended primarily for intraunion distribution),³ the court construed the statute to exclude the facts alleged in the indictment as a matter of statutory construction. The decision, therefore, necessarily holds—as we point out in our main brief—that the statute does not cover *any* union broadcast involving speech, no matter what the amount expended, the kind of political advocacy involved, the intent of the unions in making the broadcast, or the role of the union's broadcasts in the candidate's campaign.⁴ That is

³ Appellee cites testimony of Assistant Attorney General Warren Olney III given before a Senate Committee in May, 1955, recommending the amendment of Section 610 to make it a disclosure, rather than a prohibitory, statute as evidence that the Department of Justice had interpreted the Court's decision in *United States v. C.I.O.*, 335 U.S. 106, more broadly prior to this case (Appellee's Br. 42-45). Even if the point had any relevance here, it is not an accurate analysis of the testimony. Mr. Olney correctly noted that since five members of this Court had reserved decision as to the constitutional issues underlying the application of Section 610 to any union political expenditure, while four Justices would have held the statute unconstitutional on its face, its enforcement was rendered very difficult without a definitive pronouncement by this Court on the constitutional issues. However, the observation that there had been only three prosecutions under the section reflects the point, developed in our main brief, that under the statute as interpreted in the *C.I.O.* case there is a wide area where unions may and do operate without contravening the statute. This does not mean, and Mr. Olney did not imply, that if a union chose not to observe the limitations, and chose to use general rather than voluntarily-given funds for electioneering, such acts would not be within the statute.

⁴ In essence, the district court made the same determination here, with respect to union broadcasts, that some courts and commentators have made with respect to the relationship between picketing

the precise ruling which is now before the Court for review.⁵

II

The Fact that There May Be Disputed Issues under the Indictment Does Not Render It Invalid.

Appellee argues (Br. 22-25) that the Government's statement in its brief—that the issue of whether the financing of a particular broadcast is in fact an "expenditure" under the statute must be determined on the basis of the proof to be developed at a trial—shows that the indictment is too vague and indefinite to state an offense. On this theory, any indictment is defective because all the details of the evidence on which the Government will rely in any case are invariably not spelled out in the indictment.

Here, the indictment charged the payment of substantial sums out of general union funds to a commercial television station, not owned by the union, to pay for television broadcasts urging, advocating, and endorsing the election of particular candidates with intent to influence the public generally and affect a particular election. It is the combination of these facts which, as

and the right of free speech, i.e., that picketing is always protected because it necessarily involves speech. This Court, on the other hand, has recognized that picketing can and does involve more than speech, and therefore can be appropriately regulated. *Giboney v. Empire Storage Co.*, 336 U.S. 490; *Hughes v. Superior Court*, 339 U.S. 460; *International Brotherhood of Teamsters Union v. Hanke*, 339 U.S. 470; *Building Service Employees International Union v. Gazzam*, 339 U.S. 532; *United States v. Petrillo*, 332 U.S. 1.

⁵ Under the Criminal Appeals Act, this Court concerns itself with the construction of the statute adopted by the District Court and "the facts alleged in the indictment." *United States v. Beacon Brass Co.*, 344 U.S. 43, 47; *United States v. Hoy*, 330 U.S. 724, 725; *United States v. Hood*, 343 U.S. 148; *United States v. C.I.O.*, 335 U.S. 106.

we indicate in the main brief, spells out the type of "expenditure"—amounting to or approaching an indirect contribution—which is prohibited by Section 610. An indictment which charges that combination of facts, as this one does, obviously does not, as appellee urges (Br. 25), require "proof of nothing more than the expression of union views"; it requires proof of political advocacy to the general public intended to influence the voting of the general public—i.e., at the minimum, some degree of active electioneering on behalf of particular candidates.⁶

Of course, under such an indictment, issues involving the scope of Section 610 may very well arise at a trial. Conceivably, a defendant might undertake to show that its expressions of advocacy were not directed primarily to the general public, but to its own members. Conceivably, a defendant might undertake to argue that the broadcasts were merely statements of the union's views on economic matters, with a factual record of a candidate's previous votes on such matters. Conceivably, there could be close issues as to whether a particular broadcast was, under all the circumstances, active electioneering or no more than a simple statement of the union's position. The possible existence of such issues, however, does not make the indictment insufficient. Where a perjury indictment alleges that the false testimony was material, there can be close questions as to whether it was in fact material. Where a Sherman Act indictment alleges an unreasonable restraint of trade, there can be disputed issues as to whether the restraint was in fact unreason-

⁶ The Court is not unfamiliar with the difference between advocacy and endorsement, on the one hand, and the mere expression of views, on the other. Cf. *Dennis v. United States*, 341 U.S. 494.

able. That does not mean that all the evidence to show materiality in perjury or unreasonable restraints of trade under the Sherman Act must be set out in the indictment in order to have the indictment state an offense. So here, the validity of the indictment is not affected by the fact that all the proof which the Government believes will show the kind of political advocacy which amounts to electioneering was not set forth in the indictment and that appellee may at the trial wish to argue that this evidence does not show such electioneering.

This indictment charges electioneering by the union to the general public out of general union funds. In our main brief, we offered, by way of illustration, the suggestion that the indictment would cover such electioneering activities as spot broadcasts. We did not deny that there might be broadcasts not constituting such out-and-out electioneering and therefore more open to dispute as to whether they are within the scope of the statute. This issue, as suggested in our main brief, must be determined on all the facts at the trial. That statement, however, does not imply, as appellee would have this Court believe, that the indictment as written covers "either legal or prohibited conduct". As we read the statute and its legislative history, Congress intended to bar the use of general union funds for any form of active general electioneering on behalf of particular candidates. The indictment charged that appellee did just what the statute prohibits. The issue as to whether the particular broadcasts were or were not that kind of electioneering is a matter of proof and not of the charge. Merely because the Government might fail to carry its burden at the trial of proving the allegations of the indictment, it does

not follow that the indictment covers "either legal or prohibited conduct". Judged by that standard, every indictment is defective; for there always exists the possibility in any case that the Government's evidence will be insufficient to convict. Only a trial can resolve that issue.

By moving to dismiss the indictment which, as noted, clearly charged electioneering to the general public on behalf of particular candidates, appellees sought a ruling that no speech by a union on behalf of particular candidates can ever come within the statute. It is appellee by its motion, and the district court by its ruling, which have posed the issue of whether any television broadcast by a union to the general public on behalf of particular candidates can ever be an "expenditure" under Section 610, regardless of the proof as to the degree of advocacy and the circumstances of the broadcast. The Government filed an indictment under which it was ready to spell out, from all the circumstances, the kind of active advocacy to the general public designed to influence an election which the indictment charges and which we believe the statute prohibits. It is the appellee which has succeeded in having the case come before this Court on the bare allegations of the indictment, and which now, after accomplishing that purpose, complains because the indictment is defended on the basis of its charge. ¹ Appellee is asking this Court to assume, without the evidence which its motion prevented the Government from offering, that the evidence would be different from or less than the indictment charges, and to decide constitutional issues on this assumed and unproved basis.

In this connection, it should be noted that appellee's motion to dismiss the indictment, which resulted in the

dismissal now appealed from, neither attacked the indictment for insufficiency of pleading, nor suggested any different reading of its language than appears on its face (R. 18-19), although appellee had applied for and been granted two extensions of time in which to file a motion for a bill of particulars or other motions going to the sufficiency of the indictment as a pleading (R. 7-9, 10-14, 15-16).⁷ Appellee in fact admitted for purposes of the hearing the allegations of the indictment (R. 23), and conceded on inquiry from the court that "a very accurate summary" of its position was that (R. 21) "items like this, as alleged in the indictment—those are not the type of expenditures that Congress had in mind and that this court, in trying to give a constitutional—in trying to interpret the law constitutionally, couldn't make any other decision except that they are not that kind of expenditures". It is therefore clear that appellee specifically sought to have the statute construed against the indictment exactly as it was written, *i.e.*, to obtain (as it did) a ruling that no broadcast by a union paid for out of general funds in behalf of particular candidates designed to influence the general public can ever be an "expenditure" under Section 610.

III

Section 610, if Construed to Cover the Facts Alleged in this Indictment, Is Not Unconstitutional.

1. So much of appellee's discussion of the constitutionality of the statute is based on its construction of

⁷ The appellee entered its plea of not guilty to the charges of the indictment on July 29, 1955, at the arraignment (R. 15). On that date (R. 7-9, 14) and subsequently on September 26, 1955 (R. 16-18), the court granted extensions of time in which to file the motion for a bill of particulars to September 30, 1955, and then to October 31, 1955, respectively.

the indictment (which we have shown, *supra*, to be erroneous) that it has but little relevance to the question before this Court. Appellee's attempted restatement of the issue eliminates those elements of advocacy, purpose, and intent which are material allegations of this indictment and which characterize the acts complained of as "electioneering" rather than a mere statement of the union's position to the public. As we have demonstrated (Govt. Br. 48-51), Section 610 as sought to be applied under this indictment does not impose a prohibition on all union political activity, even of the kind designed to reach the public at large. The Act does not place any restraint on the political activities of the highly effective and complex political action groups organized on a nation-wide basis to represent labor at every level, so long as such activities are supported by voluntary contributions. Unions may, in many ways, some of which we have enumerated (Govt. Br. 48-51), disseminate their collective political views among their membership, and engage in many other kinds of public political activities financed through levied or union treasury funds. Unions have in fact admittedly been able to take an active and effective part in national political activity for the past ten years under the limited restraints of Section 610. There is therefore no warrant for appellee's repeated characterizations of Section 610 as a "prohibition of union political expression" (*e.g.*, Appellee's Br. 60), and its assertions, *e.g.*, that (Appellee's Br. 60) "In one stroke the primary organized representatives of 20 million laboring men and their families are denied the power of persuasion in the protection of their own interests and that of their members". Such statements overlook both the limited scope of Section 610 and the realities of political action in the

labor movement in America today, as described in our main brief.

This indictment charges what we believe the statute was, at the minimum, designed to prohibit:—union political activity which is financed with general union funds, which advocates, urges, and endorses particular candidates in specific elections, and which is intended to influence the outcome of that election. Section 610 as sought to be applied by this indictment cannot therefore be said, as appellee contends (Br. 70-72), to reach beyond the specific evils which Congress found to be inherent in the use of general union funds, contributed by all union members, for active support of a particular candidate. And, as discussed in our main brief, since this limited restraint is a reasonable one in relation to the problem, it is not prohibited under the First Amendment.

The contention that the statute violates the right of union members to choose representatives (Appellee's Br. 81-87) has been fully answered by our main brief. As there pointed out, the statute was precisely aimed at protecting the individual's right to political freedom of choice in supporting political representatives who must act in relation to many fields beyond the economic interest which impels a worker to join a union. It is the individual, and not the union, who has the right to vote. And it is within the power of Congress to determine that the individual, and not the union, should decide how he will spend his money to make that vote effective.

2. Appellee contends (Appellee's Br. 104-110) that the distinction suggested by the Government (Govt. Br. 18-19)—*viz.*, between permissible union expenditures for publication of political commentary in a regularly published union newspaper distributed primarily

among its membership, on the one hand, and prohibited expenditures for union-financed telecasts to the general electorate over commercial broadcasting facilities advocating, urging, and endorsing the election of particular candidates with the intent to influence the outcome of such specific elections, on the other—is so indefinite as to render Section 610 void for vagueness for failing to draw a line between permitted and prohibited conduct by unions. That however is the very distinction drawn by this Court's opinion in the *C.I.O.* case, as we have shown in our brief (Govt. Br. 18-19), and is clearly a valid one in the light of that opinion.

Whatever validity the argument of vagueness might have had originally (the argument was made in the *C.I.O. case*, see Govt. Br., *United States v. C.I.O.*, No. 695, O.T. 1947, at pp. 88-96) was lost when this Court construed the statute as not applying to the facts set forth in that indictment alleging expenditures for the intraunion distribution of regularly published union newspapers, while leaving it to operate against the general class of crimes to which it is addressed. This Court has recently stated that, where the general class of offenses to which a statute applies is plainly within its terms, the statute will not be struck down as vague, even though marginal cases could be put where doubts might arise, and that if this general class can be made constitutionally definite by a reasonable construction of the statute, this Court is under a duty to give the statute that construction. *United States v. Harriss*, 347 U.S. 612, 618.⁸ The facts pleaded in this indictment state a case within the general class of offenses to which the

⁸ For other cases also recognizing that undue vagueness in a statute can be cured by judicial interpretation, see *Winters v. New York*, 333 U.S. 507, 510; *Fox v. Washington*, 236 U.S. 273, 277; cf. *Dennis v. United States*, 341 U.S. 494, 502.

statute, however narrowly interpreted, must relate. And although appellee on its assumed state of facts denies that the statute applies to this case, it seems to concede that the statute is applicable to some form of active union electioneering (Appellee's Br. 40).

Section 610 is at least as definite in its coverage as many other criminal statutes which this Court has upheld against a charge of vagueness. See *United States v. Harriss*, 347 U.S. 612, and the cases cited therein at *id*, p. 624, fn. 15. It is undoubtedly more precise in its coverage than the legislation challenged in *United States v. Wurzbach*, 280 U.S. 396, where the Court on direct appeal sustained an act which made it unlawful for any Congressman, or candidate for Congress, or officer or employee of the United States "to directly or indirectly solicit, receive, or be in any manner concerned in soliciting or receiving any assessment, subscription, or contribution *for any political purpose whatever*, from any such officer, employee, or person" (Emphasis added). The indictment in that case charged a Congressman with having received money from federal officers and employees for the political purpose of promoting his nomination as Republican candidate for representative at certain Republican primaries. The Court thought that the "language is perfectly intelligible and clearly embraces the acts charged." 280 U.S. at 398. It was argued that the statute was invalid, among other reasons, because there was no definite meaning to the crucial words "political purposes." However, this Court, in an opinion by Mr. Justice Holmes, said, at p. 399:

* * * But we imagine that no one not in search of trouble would feel any. Whenever the law draws a line there will be cases very near each other on

opposite sides. The precise course of the line may be uncertain, but no one can come near it without knowing that he does so, if he thinks, and if he does so it is familiar to the criminal law to make him take the risk. *Nash v. United States*, 229 U.S. 373.

Cf. Burroughs and Cannon v. United States, 290 U.S. 534 (Federal Corrupt Practices Act), and *United Public Workers v. Mitchell*, 330 U.S. 75, 103-104 (Hatch Act: "active part in political management or political campaigns").

The term "expenditure," which appellee cites as particularly vague, carries with it not only the meaning given it by the *C.I.O.* decision but also the weighty gloss placed upon it in the legislative debates which we have reviewed in our brief (Govt. Br. 24-36). That legislative history clearly shows that Congress at the very least intended the term to apply to activities in the form of indirect contributions or subsidies to specific political campaigns represented by union-financed electioneering to the general public on behalf of a particular candidate for the purpose of influencing an election. There is thus in the offense an element of *scienter* which in itself does much to "relieve the statute of the objection that it punishes without warning an offense of which the accused was unaware." *Screws v. United States*, 325 U.S. 91, 101-102. As this Court said in *United States v. Ragen*, 314 U.S. 513, 523-524, "On no construction can the statutory provisions here involved become a trap for those who act in good faith. A mind intent upon willful evasion is inconsistent with surprised innocence." *Cf. Boyce Motor Lines v. United States*, 342 U.S. 337, 340.

3. Appellee's contention that Section 610 is such an arbitrary discrimination against labor organizations that it violates due process is answered by the legislative history of the statute.*

In this field, Congress has acted to meet evils as it found them. It waited until a particular danger seemed to it to become pressing before taking action. Thus, the ban against contributions by corporations was imposed years before limitations were placed on labor organizations because only the use of the aggregate wealth of corporations to influence elections was found to be an evil in the early part of the century. Not until labor organizations became strong enough so that they were in a position to exert influence on elections which was believed to be disproportionate to the size of their membership, not until Congress had before it evidence of the use of that power, did Congress undertake to extend the prohibition against contributions to labor organizations. And not until Congress had before it substantial evidence that the prohibition against contributions was being avoided by contributions in the form of expenditures did it undertake to prohibit expenditures as well as contributions.

As to the contention (Appellee's Br. 98-101) that the rationale which supports the ban against corporations

* It should be noted, as this Court has frequently stated, that the Fifth Amendment, unlike the Fourteenth, contains no equal protection clause, and any legislative classification which is not so arbitrary as to deny due process of law will therefore be upheld. See *LaBelle Iron Works v. United States*, 256 U.S. 377, 392; *Steward Machine Co. v. Davis*, 301 U.S. 548, 584-585; *Sunshine Coal Co. v. Adkins*, 310 U.S. 381, 400, 401; *Helvering v. Lerner Stores Co.*, 314 U.S. 463, 468; *Detroit Bank v. United States*, 317 U.S. 329, 337-338; *Hirabayashi v. United States*, 320 U.S. 81, 100.

and labor organizations would justify the extension of the act to other organizations as well, the answer was given by Senator Taft in the course of the debates on this provision (93 Cong. Rec. 6441):

* * * if any abuses arise with respect to other organizations we can extend the provision of law to the other groups.

Certainly, labor organizations are different in character, scope, and purpose from other types of unincorporated associations, as the very existence of the Wagner Act and its subsequent modification in the Labor Management Relations Act shows. The legislative history of Section 610 shows, moreover, that Congress did not extend the act to cover unincorporated associations of employers, the type of unincorporated association most analogous to labor organizations in relation to the purpose of the statute here involved, because it felt that the existing ban against contributions and expenditures by corporations was sufficient to prevent the use of corporate funds for political purposes through the medium of unincorporated associations.¹⁰

¹⁰ See 93 Cong. Rec. 6439. Speaking of such business associations as the National Association of Manufacturers, Senator Taft said:

"Such an association receiving corporation funds and using them in an election would violate the law, in my opinion, exactly as the PAC, if it got its fund from labor unions, would violate the law. If the labor people should desire to set up a political organization and obtain direct contributions for it, there would be nothing unlawful in that. If the National Association of Manufacturers, we will say, wanted to obtain individual contributions for a series of advertisements, and if it, itself, were not a corporation, then, just as in the case of PAC, it could take an active part in a political campaign. But the prohibition is against a labor organization or a corporation participating in an election either by a contribution to somebody else or by direct expenditure of its own funds. That has been understood to be the law of corporations for many years, and until labor

Nor is there any reason why Congress must necessarily deal with all unincorporated associations as a unit in enacting legislation such as Section 610. Even apart from fundamental differences between labor organizations and other unincorporated associations, this Court has

* * * frequently said that the legislative authority, exerted within its proper field, need not embrace all the evils within its reach. The Constitution does not forbid "cautious advance, step by step", in dealing with the evils which are exhibited in activities within the range of legislative power. *Carroll v. Greenwich Insurance Co.*, 199 U.S. 401, 411; *Keokee Coke Co. v. Taylor*, 234 U. S. 224, 227; *Miller v. Wilson*, 236 U. S. 373, 384; *Sproles v. Binford*, 286 U. S. 374, 396. * * *

National Labor Relation Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, 46. See also *Alabama State Federation of Labor v. McAdory*, 325 U. S. 450, 471-472, where the Court said:

The contention that the Act denies equal protection because its provisions, or some of them, have not been extended to business corporations or associations or to labor organizations which are subject to the Railway Labor Act, 45 U.S.C. § 151 *et seq.*,

organizations were placed under the terms of the Smith-Connally Act, no one supposed that corporations could make direct expenditures without it being considered a contribution. But after the labor organizations were included, that question was raised. In order that it might be finally resolved in this bill, we made it perfectly clear that it covers either a contribution to somebody else or an expenditure of one's own funds for the same purpose, in connection with an election."

is without substance. The Constitution does not oblige a state to regulate or reform all types of associations and organizations, or none. It may begin with such as in its judgment most need regulation. *Carroll v. Greenwich Insurance Co.*, 199 U.S. 401, 411; *Keokee Coke Co. v. Taylor*, 234 U.S. 224, 227; *Bunting v. Oregon*, 243 U.S. 426; *Sproles v. Binford*, 286 U.S. 374, 396; cf. *West Coast Hotel Co. v. Parrish*, 300 U.S. 379, 400, and cases cited.

And, as this Court said in *United States v. Petrillo*, 332 U. S. 1, 8-9:

* * * it is not within our province to say that, because Congress has prohibited some practices within its power to prohibit, it must prohibit all within its power. * * * Nor could we strike down such legislation, even if we believed that as a matter of policy it would have been wiser not to enact the legislation or to extend the prohibitions over a wider or narrower area.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

WARREN OLNEY III,
Assistant Attorney General.

BEATRICE ROSENBERG,
CARL H. IMLAY,
Attorneys.

NOVEMBER, 1956.

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1956

No. 44

UNITED STATES OF AMERICA,
Appellant,
v.

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AIRCRAFT AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW-CIO),
Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MICHIGAN

PETITION FOR REHEARING

The United Automobile Workers, appellee herein, respectfully moves for a rehearing of the opinion and judgment of this Court rendered March 11, 1957.

Counsel are not unmindful of the careful consideration which this Court gives to cases briefed and argued before it and of the Court's general practice of denying petitions for rehearing directed at published decisions of the Court.

But, as the majority opinion states, "this case . . . raises issues not less than basic to a democratic system"; and, as the minority opinion states, "the principle at stake . . . is as important an issue as has come before the Court, for it reaches the very vitals of our system of Government." This recognition by both majority and minority opinions of the fundamental significance of the issues involved in this case to the continued vitality of our democratic processes, together with the Court's unusual action in separating the question of statutory construction from that of the constitutional validity of the statute as construed, have seemed to counsel sufficient warrant for requesting the rehearing.¹ The separation of these two questions has implications for the adjudicatory process under the Criminal Appeals Act which, we believe, should be brought to the attention of the Court.

We believe and respectfully submit that the majority opinion seeks to separate the inseparable. The District Court, construing the statute narrowly to avoid the grave constitutional doubts raised by this Court in the *CIO* case and evident on the face of the statute, held the indictment outside the purview of the statute. This Court, viewing the question of statutory construction as something wholly separate and apart from the constitutional issues involved, found the statute broad enough to cover the facts alleged in the indictment and returned the constitutional issues to the District Court for trial.

¹ It might be noted, too, that the Court has granted rehearing most recently in three cases in which the issues at stake were of far less public significance than those which the Court itself recognized as existing here and where no more compelling arguments for reconsideration of the Court's decision were advanced than will be set forth herein. *Elgin J. & E.R. Co. v. Burley*, 325 U.S. 711, rehearing granted, 326 U.S. 801, second opinions, 327 U.S. 661; *Graver Mfg. Co. v. Linde Co.*, 336 U.S. 271, rehearing granted, 337 U.S. 910, second opinions, 339 U.S. 605; *Reid v. Covert*, 351 U.S. 487, rehearing granted, 352 U.S. 901.

By this disposition of the case, we submit, the Court has rejected one of its own guiding principles. A statute placing restrictions on freedom of political activity cannot be construed in a vacuum unenlightened by the vital constitutional issues to which these restrictions give rise. "The principle is old and deeply embedded in our jurisprudence that this Court will construe a statute in a manner that requires decision of serious constitutional questions only if the statutory language leaves no reasonable alternative." *United States v. Five Gambling Devices, etc.*, 346 U.S. 441, 448. And, in recent years, this Court has even "strained" statutory language to find such a reasonable alternative and thus to avoid constitutional issues in this area of political freedoms. *United States v. CIO*, 335 U.S. 106; *United States v. Rumely*, 345 U.S. 41. The Court's action in this case in sealing off into watertight compartments the related issues of statutory construction and constitutional validity negates its own policy of straining to find reasonable alternatives to a statutory construction which raises grave constitutional doubts.

Nor is there support for the Court's suggestion that Section 610 lacks ambiguity and that "only one interpretation may be fairly derived from the relevant materials." The decision of this Court in the *CIO* case is itself the best authority for the ambiguity of the statute. There, although the literal meaning of the word "expenditure" in the statute was admittedly as applicable to the facts set forth in the indictment as it is here and although the legislative history equally supported a broad interpretation of the word "expenditure," this Court found the word "expenditure" sufficiently ambiguous to strain for a narrow construction that would avoid constitutional doubts and held that the indictment failed to charge an

offense under the statute.² We respectfully suggest that the decision in the *CIO* case would have been otherwise had the Court adopted the procedure used in this case of deciding the interpretative issue in a vacuum unrelated to the constitutional issues. Indeed, it is precisely because the Court of Appeals for the Second Circuit in the *Painters Local* case followed the decisions of this Court favoring the avoidance of constitutional issues and relating the problems of statutory interpretation and constitutional doubts, that it held in circumstances identical to those here that the statute should be so limited in scope as not to cover the facts of that and this case.³ And it can hardly be said that only one interpretation is possible in the face of the holding by three of the most respected Judges of the Court of Appeals in recent history—Judges A. Hand, Clark and Frank—that two interpretations *were* possible and that the one avoiding constitutional doubts should be chosen.

Indeed, the Court's opinion in this case is itself the best evidence of the inseparability of the interpretative and constitutional issues. For the very questions posed by the majority for resolution at the trial (slip opinion, p. 25) are at least as relevant to statutory construction as they are to constitutional validity. Under this Court's wise and historic rule of avoiding constitutional issues wherever possible, if these questions are in fact as significant as the Court indicated,⁴ they should have been resolved

² It should be remembered, too, that the Court's action in searching out a construction to avoid the constitutional issues was on its own initiative; the parties deemed the statute unambiguous and waived all questions of statutory construction.

³ This, of course, was Judge Picard's reasoning, too. "What the Supreme Court has said," he wrote in his opinion below, "is not ambiguous to us" (R. 44).

⁴ The opinion of the Court states four points on which matters "may be brought to the surface" by a trial (slip opinion, p. 24). On at least two of these four, matters are now already clearly at the surface. The indictment specifically alleges, and petitioner has never denied, that the

prior to a decision on statutory construction which makes an ultimate constitutional determination inevitable.

The majority's citation, as evidence of the need for trial, of Senator Taft's statements during the debates that prosecution under Section 610 may present difficult questions of fact is actually further evidence of the inseparability of the interpretative and constitutional issues. For the difficult questions of fact referred to by Senator Taft were not related to constitutional questions but to problems of the reach of the statute itself.⁵ When Senator Taft said, "it is a question of fact which would have to be raised in every case," he was talking about statutory interpretation, not constitutional law.

We respectfully submit that the Court's reasoning in withholding constitutional adjudication was at least equally relevant to withholding statutory interpretation.

* * * * *

Counsel recognize that the Criminal Appeals Act created a degree of embarrassment for this Court arising from the fact that Congress sought speedy decision in an area where the Court has traditionally resisted premature adjudication. The embarrassment is compounded of course when, as here, issues of statutory construction and constitutional validity are joined before the Court in the review of indictments revealing only the most minimal facts. We believe, however, that, with two possible

broadcast was paid for out of the general dues of the union; and, of course, a broadcast over a commercial station must have reached the public at large. The remaining questions posed by the Court (whether the broadcast was active electioneering or simply a statement of the record of a candidate and whether it was intended to affect the results of the election), have at least as much significance for determining the scope of the statute (Brief for the United States, pp. 18-19) as they do for determining its constitutionality.

⁵ See Senator Taft's colloquies set out at pp. 31-35 of the Brief for the United States and at the slip opinion p. 19, n. 1.

alternatives available for the resolution of this dilemma, this Court chose a third procedure (dividing inseparable issues) which contravenes its own principles and puts a premium on skeletal indictments.

1. The first alternative for resolving the Court's dilemma, of course, is that adopted by the Chief Justice, Mr. Justice Douglas and Mr. Justice Black; they reached and decided the momentous constitutional issues raised by the indictment. So, too, in other cases under the Criminal Appeals Act this Court has proceeded to consideration of the constitutional validity of the statute *on its face* after construing the applicable statute in such a way as to sustain the indictment. *United States v. Green*, 350 U.S. 415⁶; *United States v. Harriss*, 347 U.S. 612. In this connection, it is significant that "prompt determinations of matters of great public interest" has been recognized as the reason underlying statutory direct appeals. *Fleming v. Rhodes*, 331 U.S. 100, 104. Congress surely had this public interest in mind when, in the Criminal Appeals Act, it authorized direct appeal prior to trial in cases in which the construction or constitutionality of a criminal statute is decided adversely to the Government.

2. The second alternative, of course, would have been to have returned the case for trial without deciding the question of the construction of Section 610. As we have seen, any factual enlightenment to be derived from a trial is as much required for the interpretative as for the constitutional issues. The factual issues on which this Court purports to seek further details are of as much intrinsic

⁶ Although trial had been held in the *Green* case, this Court ruled only on the allegations of the indictment. 350 U.S. at 421.

importance to solving difficult problems of statutory scope as they are to clarifying questions of constitutional validity. There is no indication that Congress intended to require, nor could it constitutionally have required (*Cf. Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 346, concurring opinion of Mr. Justice Brandeis, and cases cited therein), that this Court decide interpretative issues on inadequate facts any more than it intended to require or could have required such decisions with respect to constitutional issues. This Court's strictures against hypothetical determinations are as applicable to statutory construction as to constitutional adjudication.

Conclusion

In a word, this Court should have decided both the statutory and constitutional questions or neither. By rejecting the two alternatives discussed above, the Court has been forced to attempt a separation of the inseparable and to render an interpretative decision on an indictment too minimal, in the Court's own view, for constitutional adjudication. If this decision stands, it will put a premium on the Government's use of minimal indictments rendered invulnerable by their generality. For under this decision, defendants must either go to trial unnecessarily or this Court must decide the questions of statutory interpretation brought up under the Criminal Appeals Act on a minimal factual basis and unrelated to constitutional issues. This petition for a rehearing raises an important question of this Court's processes of adjudication under the Criminal Appeals Act. We respectfully urge the Court to grant this petition for a rehearing so that it may consider whether

either of the alternatives suggested above more properly accord with its own precedents and principles.

Respectfully submitted,

HAROLD A. CRANFIELD,
8000 East Jefferson Avenue,
Detroit 14, Michigan;

JOSEPH L. RAUH, JR.,
1631 K Street, N. W.,
Washington 6, D. C.,
Attorneys for Appellee.

APRIL, 1957.

Certification

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

JOSEPH L. RAUH, JR.,
Attorney for Appellee.

(4734-0)

SUPREME COURT OF THE UNITED STATES

No. 44.—OCTOBER TERM, 1956.

United States of America, Appellant,

v.

International Union United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO).

On Appeal From
the United States
District Court for
the Eastern District of Michigan.

[March 11, 1957.]

MR. JUSTICE FRANKFURTER delivered the opinion of the Court.

The issues tendered in this case are the construction and, ultimately, the constitutionality of 18 U. S. C. § 610, an Act of Congress that prohibits corporations and labor organizations from making "a contribution or expenditure in connection with" any election for federal office. This is a direct appeal by the Government from a judgment of the District Court for the Eastern District of Michigan dismissing a four-count indictment that charged appellee, a labor organization, with having made expenditures in violation of that law. Appellee had moved to dismiss the indictment on the grounds (1) that it failed to state an offense under the statute and (2) that the provisions of the statute "on their face and as construed and applied" are unconstitutional. The district judge held that the indictment did not allege a statutory offense and that he was therefore not required to rule upon the constitutional questions presented. 138 F. Supp. 53. The case came here, 351 U. S. 904, under the Criminal Appeals Act of 1907, as amended, 18 U. S. C. § 3731.

It is desirable at the outset to quote the statute in its entirety:

"It is unlawful for any national bank, or any corporation organized by authority of any law of

Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section.

"Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than \$5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, and any person who accepts or receives any contribution, in violation of this section, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if the violation was willful, shall be fined not more than \$10,000 or imprisoned not more than two years, or both.

"For the purposes of this section 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exist for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." 61 Stat. 136, 159.

Appreciation of the circumstances that begot this statute is necessary for its understanding, and understanding of it is necessary for adjudication of the legal problems before us. Speaking broadly, what is involved here is the integrity of our electoral process, and, not less, the responsibility of the individual citizen for the successful functioning of that process. This case thus raises issues not less than basic to a democratic society.

The concentration of wealth consequent upon the industrial expansion in the post-Civil War era had profound implications for American life. The impact of the abuses resulting from this concentration gradually made itself felt by a rising tide of reform protest in the last decade of the nineteenth century. The Sherman Law was a response to the felt threat to economic freedom created by enormous industrial combines. The income tax law of 1894 reflected congressional concern over the growing disparity of income between the many and the few.

No less lively, although slower to evoke federal action, was popular feeling that aggregated capital unduly influenced politics, an influence not stopping short of corruption. The matter is not exaggerated by two leading historians:

"The nation was fabulously rich but its wealth was gravitating rapidly into the hands of a small portion of the population, and the power of wealth threatened to undermine the political integrity of the Republic." 2 Morison and Commager, *The Growth of the American Republic* (4th ed. 1950), 355.

In the '90's many States passed laws requiring candidates for office and their political committees to make public the sources and amounts of contributions to their campaign funds and the recipients and amounts of their campaign expenditures. The theory behind these laws was that the spotlight of publicity would discourage

4 U. S. v. UNITED AUTOMOBILE WORKERS.

corporations from making political contributions and would thereby end their control over party policies. But these state publicity laws either became dead letters or were found to be futile. As early as 1894, the sober-minded Elihu Root saw the need for more effective legislation. He urged the Constitutional Convention of the State of New York to prohibit political contributions by corporations:

"The idea is to prevent . . . the great railroad companies, the great insurance companies, the great telephone companies, the great aggregations of wealth from using their corporate funds, directly or indirectly, to send members of the legislature to these halls in order to vote for their protection and the advancement of their interests as against those of the public. It strikes at a constantly growing evil which has done more to shake the confidence of the plain people of small means of this country in our political institutions than any other practice which has ever obtained since the foundation of our Government. And I believe that the time has come when something ought to be done to put a check to the giving of \$50,000 or \$100,000 by a great corporation toward political purposes upon the understanding that a debt is created from a political party to it." Quoted in Hearings before House Committee on Elections, 59th Cong., 1st Sess. 12; see Root, Addresses on Government and Citizenship (Bacon and Scott eds. 1916).

Concern over the size and source of campaign funds so actively entered the presidential campaign of 1904 that it crystallized popular sentiment for federal action to purge national politics of what was conceived to be the pernicious influence of "big money" campaign contributions. A few days after the election of 1904, the defeated candidate for the presidency said:

"The greatest moral question which now confronts us is, Shall the trusts and corporations be prevented from contributing money to control or aid in controlling elections?" Quoted, Hearings, *supra*, at 56.

President Theodore Roosevelt quickly responded to this national mood. In his annual message to Congress on December 5, 1905, he recommended that:

"All contributions by corporations to any political committee or for any political purposes should be forbidden by law; directors should not be permitted to use stockholders' money for such purposes; and, moreover, a prohibition of this kind would be, as far as it went, an effective method of stopping the evils aimed at in corrupt practices acts." 40 Cong. Rec. 96.

Grist was added to the reformers' mill by the investigation of the great life insurance companies conducted by the Joint Committee of the New York legislature, the Armstrong Committee, under the guidance of Charles Evans Hughes. The Committee's report, filed early in 1906, revealed that one insurance company alone had contributed almost \$50,000 to a national campaign committee in 1904 and had given substantial amounts in preceding presidential campaigns. The Committee concluded:

"Contributions by insurance corporations for political purposes should be strictly forbidden. Neither executive officers nor directors should be allowed to use the moneys paid for purposes of insurance in support of political candidates or platforms Whether made for the purpose of supporting political views or with the desire to obtain protection for the corporation, these contributions have been wholly unjustifiable. In the one case executive officers have sought to impose their political views upon a constituency of divergent convictions, and in the other they have been guilty of a serious offense

against public morals. The frank admission that moneys have been obtained for use in State campaigns upon the expectation that candidates thus aided in their election would support the interests of the companies, has exposed both those who solicited the contributions and those who made them to severe and just condemnation." Report of the Joint Committee of the Senate and Assembly of the State of New York Appointed to Investigate the Affairs of Life Insurance Companies, 397 (1906).

Less than a month later the Committee on Elections of the House of Representatives began considering a number of proposals designed to cleanse the political process. Some bills prohibited political contributions by certain classes of corporations; some merely required disclosure of contributions; and others made bribery at elections a federal crime. The feeling of articulate reform groups was reflected at a public hearing held by the Committee. Perry Belmont, leader of a nation-wide organization advocating a federal publicity bill, stated:

"... this thing has come to the breaking point. We have had enough of it. We don't want any more secret purchase of organizations, which nullifies platforms, nullifies political utterances and the pledges made by political leaders in and out of Congress." Hearings before House Committee on Elections, 59th Cong., 1st Sess. 12.

This view found strong support in the testimony of Samuel Gompers, President of the American Federation of Labor, who said, with respect to the publicity bill:

"Whether this bill meets all of the needs may be questioned; that is open to discussion; but the necessity for some law upon the subject is patent to every man who hopes for the maintenance of the institutions under which we live. It is doubtful to my mind

if the contributions and expenditures of vast sums of money in the nominations and elections for our public offices can continue to increase without endangering the endurance of our Republic in its purity and in its essence. . . .

" . . . If the interests of any people are threatened by corruption in our public life or corruption in elections, surely it must of necessity be those, that large class of people, whom we for convenience term the **wageworkers**.

"I am not in a mood, and never am, to indulge in denunciations or criticism, but it does come to me sometimes that one of the reasons for the absence of legislation of a liberal or sympathetic or just character, so far as it affects the interests of the wage-earners of America, can be fairly well traced with the growth of the corruption funds and the influences that are in operation during elections and campaigns I am under the impression that the patience of the American workingmen is about exhausted—

" . . . [If] we are really determined that our elections shall be free from the power of money and its lavish use and expenditure without an accounting to the conscience and the judgment of the people of America, we will have to pass some measure of this kind." *Id.*, at 28-31.

President Roosevelt's annual message of 1906 listed as the first item of congressional business a law prohibiting political contributions by corporations. 41 Cong. Rec. 22. Shortly thereafter, in 1907, Congress provided:

"That it shall be unlawful for any national bank, or any corporation organized by authority of any laws of Congress, to make a money contribution in

connection with any election to any political office. It shall also be unlawful for any corporation whatever to make a money contribution in connection with any election at which Presidential and Vice-Presidential electors or a Representative in Congress is to be voted for or any election by any State legislature of a United States Senator." 34 Stat. 864.

As the historical background of this statute indicates, its aim was not merely to prevent the subversion of the integrity of the electoral process. Its underlying philosophy was to sustain the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government.

This Act of 1907 was merely the first concrete manifestation of a continuing congressional concern for elections "free from the power of money (see statement of Samuel Gompers, *supra*)."

The 1909 Congress witnessed unsuccessful attempts to amend the Act to proscribe the contribution of anything of value and to extend its application to the election of state legislatures. The Congress of 1910 translated popular demand for further curbs upon the political power of wealth into a publicity law that required committees operating to influence the results of congressional elections in two or more States to report all contributions and disbursements and to identify contributors and recipients of substantial sums. That law also required persons who spent more than \$50 annually for the purpose of influencing congressional elections in more than one State to report those expenditures if they were not made through a political committee. 36 Stat. 822. At the next session that Act was extended to require all candidates for the Senate and the House of Representatives to make detailed reports with respect to both nominating and election campaigns. The amendment also placed maximum limits on the amounts that

congressional candidates could spend in seeking nomination and election and forbade them from promising employment for the purpose of obtaining support. 37 Stat. 25. And in 1918 Congress made it unlawful either to offer or to solicit anything of value to influence voting. 40 Stat. 1013.

This Court's decision in *Newberry v. United States*, 256 U. S. 232, invalidating federal regulation of Senate primary elections, led to the Federal Corrupt Practices Act of 1925, 43 Stat. 1070, a comprehensive revision of existing legislation. The debates preceding that Act's passage reveal an attitude important to an understanding of the course of this legislation. Thus, Senator Robinson, one of the leaders of the Senate, said:

"We all know . . . that one of the great political evils of the time is the apparent hold on political parties which business interests and certain organizations seek and sometimes obtain by reason of liberal campaign contributions. Many believe that when an individual or association of individuals makes large contributions for the purpose of aiding candidates of political parties in winning the elections, they expect, and sometimes demand, and occasionally, at least, receive, consideration by the beneficiaries of their contributions which not infrequently is harmful to the general public interest. It is unquestionably an evil which ought to be dealt with, and dealt with intelligently and effectively." 65 Cong. Rec. 9507-9508.

One of the means chosen by Congress to deal with this evil was § 313 of the 1925 Act, which strengthened the 1907 statute (1) by changing the phrase "money contribution" to "contribution" (§ 302 (d) defined "contribution" broadly); (2) by extending the prohibition on corporate contributions to the election to Congress of

10 U. S. v. UNITED AUTOMOBILE WORKERS.

Delegates and Resident Commissioners; and (3) by penalizing the recipient of any forbidden contribution as well as the contributor.

When, in 1940, Congress moved to extend the Hatch Act, 53 Stat. 1147, which was designed to free the political process of the abuses deemed to accompany the operation of a vast civil administration, its reforming zeal also led Congress to place further restrictions upon the political potentialities of wealth. Section 20 of the law amending the Hatch Act made it unlawful for any "political committee," as defined in the Act of 1925, to receive contributions of more than \$3,000,000 or to make expenditures of more than that amount in any calendar year. And § 13 made it unlawful "for any person, directly or indirectly, to make contributions in an aggregate amount in excess of \$5,000, during any calendar year, or in connection with any campaign for nomination or election, to or on behalf of any candidate for an elective Federal office" or any committee supporting such a candidate. The term "person" was defined to include any committee, association, organization or other group of persons. 54 Stat. 767. In offering § 13 from the Senate floor Senator Bankhead said:

"We all know that money is the chief source of corruption. We all know that large contributions to political campaigns not only put the political party under obligation to the large contributors, who demand pay in the way of legislation, but we also know that large sums of money are used for the purpose of conducting expensive campaigns through the newspapers and over the radio; in the publication of all sorts of literature, true and untrue; and for the purpose of paying the expenses of campaigners sent out into the country to spread propaganda, both true and untrue." 86 Cong. Rec. 2720.

The need for unprecedented economic mobilization propelled by World War II enormously stimulated the power of organized labor and soon aroused consciousness of its power outside its ranks. Wartime strikes gave rise to fears of the new concentration of power represented by the gains of trade unionism. And so the belief grew that, just as the great corporations had made huge political contributions to influence governmental action or inaction, whether consciously or unconsciously, the powerful unions were pursuing a similar course, and with the same untoward consequences for the democratic process. Thus, in 1943, when Congress passed the Smith-Connally Act to secure defense production against work stoppages, contained therein was a provision extending to labor organizations, for the duration of the war, § 313 of the Corrupt Practices Act. 57 Stat. 163, 167. The testimony of Congressman Landis, author of this measure, before a subcommittee of the House Committee on Labor makes plain the dominant concern that evoked it:

"The fact that a hearing has been granted is a high tribute to the ability of the Labor Committee to recognize the fact that public opinion toward the conduct of labor unions is rapidly undergoing a change. The public thinks, and has a right to think, that labor unions, as public institutions should be granted the same rights and no greater rights than any other public group. My bill seeks to put labor unions on exactly the same basis, insofar as their financial activities are concerned, as corporations have been on for many years. . . .

". . . One of the matters upon which I sensed that the public was taking a stand opposite to that of labor leaders was the question of the handling of funds of labor organizations. The public was aroused by many rumors of huge war chests being maintained by labor unions, of enormous fees and dues being

extorted from war workers, of political contributions to parties and candidates which later were held as clubs over the head of high Federal officials. . . .

" . . . The source of much of the national trouble today in the coal strike situation is that ill-advised political contribution of another day [referring, apparently, to the reported contribution of over \$400,000 by the United Mine Workers in the 1936 campaign, see S. Rep. No. 151, 75th Cong., 1st Sess.]. If the provision of my bill against such an activity has [*sic*] been in force when that contribution was made, the Nation, the administration, and the labor unions would be better off." Hearings before a Subcommittee of the House Committee on Labor on H. R. 804 and H. R. 1483, 78th Cong., 1st Sess. 2-4.

Despite § 313's wartime application to labor organizations Congress was advised of enormous financial outlays said to have been made by some unions in connection with the national elections of 1944. The Senate's Special Committee on Campaign Expenditures investigated, *inter alia*, the role of the Political Action Committee of the Congress of Industrial Organizations. The Committee found "no clear-cut violation of the Corrupt Practices Act on the part of the Political Action Committee" on the ground that it had made direct contributions only to candidates and political committees involved in state and local elections and federal primaries, to which the Act did not apply, and had limited its participation in federal elections to political "expenditures," as distinguished from "contributions" to candidates or committees. S. Rep. No. 101, 79th Cong., 1st Sess. 23. The Committee also investigated, on complaint of Senator Taft, the Ohio C. I. O. Council's distribution to the public at large of 200,000 copies of a pamphlet opposing the re-election of Senator Taft and supporting his rival. In response to the C. I. O.'s

assertion that this was not a proscribed "contribution" but merely an "expenditure of its own funds to state its position to the world, exercising its right of free speech . . .," the Committee requested the Department of Justice to bring a test case on these facts. *Id.*, at 59. It also recommended extension of § 313 to cover primary campaigns and nominating conventions. *Id.*, at 81. A minority of the Committee, Senators Ball and Ferguson, advocated further amendment of § 313 to proscribe "expenditures" as well as "contributions" in order to avoid the possibility of emasculation of the statutory policy through a narrow judicial construction of "contributions." *Id.*, at 83.

The 1945 Report of the House Special Committee to Investigate Campaign Expenditures expressed concern over the vast amounts that some labor organizations were devoting to politics:

"The scale of operations of some of these organizations is impressive. Without exception, they operate on a Nation-wide basis; and many of them have affiliated local organizations. One was found to have an annual budget for 'educational' work approximating \$1,500,000, and among other things regularly supplies over 500 radio stations with 'briefs for broadcasters.' Another, with an annual budget of over \$300,000 for political 'education,' has distributed some 80,000,000 pieces of literature, including a quarter million copies of one article. Another, representing an organized labor membership of 5,000,000, has raised \$700,000 for its national organizations in union contributions for political 'education' in a few months, and a great deal more has been raised for the same purpose and expended by its local organizations." H. R. Rep. No. 2093, 78th Cong., 2d Sess. 3.

Like the Senate Committee, it advocated extension of § 313 to primaries and nominating conventions, *id.*, at 9, and noted the existence of a controversy over the scope of "contribution." *Id.*, at 11. The following year the House Committee made a further study of the activities of organizations attempting to influence the outcome of federal elections. It found that the Brotherhood of Railway Trainmen and other groups employed professional political organizers, sponsored partisan radio programs and distributed campaign literature. H. R. Rep. No. 2739, 79th Cong., 2d Sess. 36-37. It concluded that:

"The intent and purpose of the provision of the act prohibiting any corporation or labor organization making any contribution in connection with any election would be wholly defeated if it were assumed that the term 'making any contribution' related only to the donating of money directly to a candidate, and excluded the vast expenditures of money in the activities herein shown to be engaged in extensively. Of what avail would a law be to prohibit the contributing direct to a candidate and yet permit the expenditure of large sums in his behalf?

"The committee is firmly convinced, after a thorough study of the provisions of the act, the legislative history of the same, and the debates on the said provisions when it was pending before the House, that the act was intended to prohibit such expenditures. *Id.*, at 40.

Accordingly, to prevent further evasion of the statutory policy the Committee attached to its recommendation that the prohibition of contributions by labor organizations be made permanent, the additional proposal that the statute

"be clarified so as to specifically provide that expenditures of money for salaries to organizers, purchase of radio time, and other expenditures by the pro-

hibited organizations in connection with elections, constitute violations of the provisions of said section, whether or not said expenditures are with or without the knowledge or consent of the candidates." *Id.*, at 46. (*Italics omitted.*)

Early in 1947 the Special Committee to Investigate Senatorial Campaign Expenditures in the 1946 elections, the Ellender Committee, urged similar action to "plug the existing loophole," S. Rep. No. 1, Part 2, 80th Cong., 1st Sess. 38-39, and Senator Ellender introduced a bill to that effect.

Shortly thereafter, Congress again acted to protect the political process from what it deemed to be the corroding effect of money employed in elections by aggregated power. Section 304 of the labor bill introduced into the House by Representative Hartley in 1947, like the Ellender bill, embodied the changes recommended in the reports of the Senate and House Committees on Campaign Expenditures. It sought to amend § 313 of the Corrupt Practices Act to proscribe any "expenditure" as well as "any contribution," to make permanent § 313's application to labor organizations and to extend its coverage to federal primaries and nominating conventions. The Report of the House Committee on Education and Labor, which considered and approved the Hartley bill, merely summarized § 304, H. R. Rep. No. 245, 80th Cong., 1st Sess. 46, and this section gave rise to little debate in the House. See 93 Cong. Rec. 3428, 3522. Because no similar measure was in the labor bill introduced by Senator Taft, the Senate as a whole did not consider the provisions of § 304 until they had been adopted by the Conference Committee. In explaining § 304 to his colleagues, Senator Taft, who was one of the conferees, said:

"I may say that the amendment is in exactly the same words which were recommended by the

Ellender committee, which investigated expenditures by Senators in the last election. . . . In this instance the words of the Smith-Connally Act have been somewhat changed in effect so as to plug up a loophole which obviously developed, and which, if the courts had permitted advantage to be taken of it, as a matter of fact, would absolutely have destroyed the prohibition against political advertising by corporations. If 'contribution' does not mean 'expenditure,' then a candidate for office could have his corporation friends publish an advertisement for him in the newspapers every day for a month before election. I do not think the law contemplated such a thing, but it was claimed that it did, at least when it applied to labor organizations. So, all we are doing here is plugging up the hole which developed, following the recommendation by our own Elections Committee in the Ellender bill." 93 Cong. Rec. 6439.

After considerable debate, the conference version was approved by the Senate, and the bill subsequently became law despite the President's veto. It is this section of the statute that the District Court held did not reach the activities alleged in the indictment.

On review under the Criminal Appeals Act of a district court judgment dismissing an indictment on the basis of statutory interpretation this Court must take the indictment as it was construed by the district judge. *United States v. Borden Co.*, 308 U. S. 188. The court below summarized the allegations of the indictment at the outset of its opinion:

"Here the specific charge is that the 'expenditure' violation came in connection with the selection of candidates for a senator and representative to the United States Congress during the 1954 primary and

general elections. It is alleged that defendant paid a specific amount from its general treasury fund to Luckoff and Wayburn Productions, Detroit, Michigan, to defray the costs of certain television broadcasts sponsored by the Union from commercial television station WJBK.

"It is charged that the broadcasts urged and endorsed selection of certain persons to be candidates for representatives and senator to the Congress of the United States and included expressions of political advocacy intended by defendant to influence the electorate and to affect the results of the election.

"It is further charged that the fund used came from the Union's dues, was not obtained by voluntary political contributions or subscriptions from members of the Union, and was not paid for by advertising or sales."

Thus, for our purposes, the indictment charged appellee with having used union dues to sponsor commercial television broadcasts designed to influence the electorate to select certain candidates for Congress in connection with the 1954 elections.

To deny that such activity, either on the part of a corporation or a labor organization, constituted an "expenditure in connection with any [federal] election" is to deny the long series of congressional efforts calculated to avoid the deleterious influences on federal elections resulting from the use of money by those who exercise control over large aggregations of capital. More particularly, this Court would have to ignore the history of the statute from the time it was first made applicable to labor organizations. As indicated by the reports of the Congressional Committees that investigated campaign expenditures, it was to embrace precisely the kind of indirect contribution alleged in the indictment that Congress

amended § 313 to proscribe "expenditures." It is open to the Government to prove under this indictment activity by appellee that, except for an irrelevant difference in the medium of communication employed, is virtually indistinguishable from the Brotherhood of Railway Trainmen's purchase of radio time to sponsor candidates or the Ohio C. I. O.'s general distribution of pamphlets to oppose Senator Taft. Because such conduct was claimed to be merely "an expenditure [by the union] of its own funds to state its position to the world," the Senate and House Committees recommended and Congress enacted, as we have seen, the prohibition of "expenditures" as well as "contributions" to "plug the existing loophole."

Although not entitled to the same weight as these carefully considered committee reports, the Senate debate preceding the passage of the Taft-Hartley Act confirms what these reports demonstrate. A colloquy between Senator Taft and Senator Pepper dealt with the problem confronting us:

"Mr. PEPPER. Does what the Senator has said in the past also apply to a radio speech? If a national labor union, for example, should believe that it was in the public interest to elect the Democratic Party instead of the Republican Party, or vice versa, would it be forbidden by this proposed act to pay for any radio time, for anybody to make a speech that would express to the people the point of view of that organization?

"Mr. TAFT. If it contributed its own funds to get somebody to make the speech, I would say they would violate the law.

"Mr. PEPPER. If they paid for the radio time?

"Mr. TAFT. If they are simply giving the time, I would say not; I would say that is in the course of their regular business.

"Mr. PEPPER. What I mean is this: I was not assuming that the radio station was owned by the labor organization. Suppose that in the 1948 campaign, Mr. William Green, as president of the American Federation of Labor, should believe it to be in the interest of his membership to go on the radio and support one party or the other in the national election, and should use American Federation of Labor funds to pay for the radio time. Would that be an expenditure which is forbidden to a labor organization under the statute?

"Mr. TAFT. Yes." 93 Cong. Rec. 6439.

The discussion that followed, while suggesting that difficult questions might arise as to whether or not a particular broadcast fell within the statute, buttresses the conclusion that § 304 was understood to proscribe the expenditure of union dues to pay for commercial broadcasts that are designed to urge the public to elect a certain candidate or party.¹

¹ "Mr. BARKLEY. Suppose a certain corporation, for instance, the corporation that makes Bayer aspirin, or Jergens lotion or any other well-advertised product, employs a commentator to talk about various things, winding up with an advertisement of the product, and suppose that the radio commentator from day to day takes advantage of his employment or his sponsorship to make comments which are calculated to influence the opinions of men or women as to political candidates. Would the corporation sponsoring the particular commentator be violating the law?

"Mr. TAFT. I should have to know the exact facts. If, for instance, apart from commentators and the radio, and taking the case of a paid advertisement, suppose a corporation advertises its products, and that every day for 2 weeks before the election it advertises a candidate. I should say that would be a violation of the law. I would say the same thing probably would be true of a radio broadcast of that kind, under certain circumstances, but I think I should like to know the exact facts before expressing an opinion.

"Mr. BARKLEY. In the case of a commentator who is paid to

United States v. C. I. O., 335 U. S. 106, presented a different situation. The decision in that case rested on the Court's reading of an indictment that charged defendants with having distributed only to union members or

advertise a certain product, and who in the course of his 15 minutes on the radio may also seek to influence votes, the sponsor may say, either before or after the broadcast, that he is not responsible for what the commentary says; yet he is paying the commentator for his broadcast. Would that still be a violation of law, although the sponsor might excuse himself or attempt to excuse himself by saying he was not responsible for the opinions expressed by the commentator?

"Mr. TAFT. I think there are all degrees. It would be for a court to decide. I think as a matter of fact, if that had happened under the old law, there would have been the same question.

"I want to make the point that we are not raising any new questions here. Those same questions could have been raised with respect to corporations during the past 25 years. It is a question of fact: Was the corporation using its money to influence a political election?

"Mr. MAGNUSON. Let us consider the teamsters. Suppose they have a weekly radio program, as, indeed, they have had for a long time back. Or let us say the AFL has such a radio program. Let us assume I am running for office and they ask me to be a guest on their program. Suppose I talk on the subject of labor and do not advocate my own candidacy. Nevertheless I am on that program. My name is being advertised and I am being heard by many thousands of people. Would that be an unlawful contribution to my candidacy?

"Mr. TAFT. If a labor organization is using the funds provided by its members through payment of union dues to put speakers on the radio for Mr. X against Mr. Y, that should be a violation of the law.

"Mr. MAGNUSON. They are not paying me anything. They have asked me to be a guest.

"Mr. TAFT. I understand, but they are paying for the time on the air. Of course, in each case there is a question of fact to be decided. I cannot answer various hypotheses without knowing all the circumstances. But in each case the question is whether or not a union or a corporation is making a contribution or expenditure of

purchasers an issue, Vol. 10, No. 28, of "The CIO News," a weekly newspaper owned and published by the C. I. O. That issue contained a statement by the C. I. O. president urging all members of the C. I. O. to vote for a certain candidate. Thus, unlike the union-sponsored political broadcast alleged in this case, the communication for which the defendants were indicted in *C. I. O.* was neither directed nor delivered to the public at large. The organization merely distributed its house organ to its own people. The evil at which Congress has struck in § 313 is the use of corporate or union dues to influence the public at large to vote for a particular candidate or a particular party.

Our holding that the District Court committed error when it dismissed the indictment for having failed to state an offense under the statute implies no disrespect

funds to elect A as against B. Labor unions are supposed to keep out of politics in the same way that corporations are supposed to keep out of politics." 93 Cong. Rec. 6439-6440.

"Mr. TAYLOR. . . . Take the matter of a radio program sponsored by either a union or a corporation. I think the AFL or the CIO, one or the other, has a news commentator who comments on the news. Could he comment on political candidates favorably or unfavorably?

"Mr. TAFT. If the General Motors Corp. had a man speaking on the radio every week to advocate the election of a Republican or a Democratic Presidential candidate, the corporation ought to be punished, and it would be punished under the law. Labor organizations should be subject to the same rule.

"Mr. TAYLOR. That is altogether different. It is a more subtle thing. When a commentator is broadcasting the news every day he can do a lot more good or harm to a man by coloring his broadcast and presenting it in the guise of a news commentary than he could openly.

"Mr. TAFT. The Senator is right. It is a question of fact which would have to be raised in every case. Is it a contribution to a candidate or is it not? Possibly a knock is a boost sometimes. That argument might well be made by a person who was taking part in an election." 93 Cong. Rec. 6447.

for "the cardinal rule of construction, that where the language of an act will bear two interpretations, equally obvious, that one which is clearly in accordance with the provisions of the constitution is to be preferred." *Knights Templars' Indemnity Co. v. Jarman*, 187 U. S. 197, 205. The case before us does not call for its application. Here only one interpretation may be fairly derived from the relevant materials. The rule of construction to be invoked when constitutional problems lurk in an ambiguous statute does not permit disregard of what Congress commands.

Appellee urges that if, as we hold, 18 U. S. C. § 610 embraces the activity alleged in the indictment, it offends several rights guaranteed by the Constitution.³ The Government replies that the actual restraint upon union political activity imposed by the statute is so narrowly limited that Congress did not exceed its powers to protect the political process from undue influence of large aggregations of capital and to promote individual responsibility for democratic government. Once more we are confronted with the duty of being mindful of the conditions under which we may enter upon the delicate process of constitutional adjudication.

The impressive lesson of history confirms the wisdom of the repeated enunciation, the variously expressed admonition, of self-imposed inhibition against passing on

³" . . . if such an expenditure is prohibited by 18 U. S. C. 610, the statute violates the provisions of the Constitution of the United States in that the statute (i) abridges freedom of speech and of the press and the right peaceably to assemble and to petition; (ii) abridges the right to choose senators and representatives guaranteed by Article I, § 2 and the Seventeenth Amendment; (iii) creates an arbitrary and unlawful classification and discriminates against labor organizations in violation of the Fifth Amendment, and (iv) is vague and indefinite and fails to provide a reasonably ascertainable standard of guilt in violation of the Fifth and Sixth Amendments." Brief for appellee, pp. 2-3.

the validity of an Act of Congress "unless absolutely necessary to a decision of the case." *Burton v. United States*, 196 U. S. 283, 295.³ Observance of this principle makes for the minimum tension within our democratic political system where "Scarcely any question arises . . . which does not become, sooner or later, a subject of judicial debate." 1 De Tocqueville, *Democracy in America* (4th Am. ed. 1843), 306.

The wisdom of refraining from avoidable constitutional pronouncements has been most vividly demonstrated on the rare occasions when the Court, forgetting "the fallibility of the human judgment,"⁴ has departed from its own practice. The Court's failure in *Dred Scott v. Sandford*, 19 How. 393, "to take the smooth handle for the sake of repose" by disposing of the case solely upon "the outside issue" and the effects of its attempt "to settle the agitation" are familiar history.⁵ *Dred Scott* does not

³ Cases are collected in the opinion of Mr. Justice Brandeis in *Ashwander v. Tennessee Valley Authority*, 297 U. S. 288, 345 *et seq.*

⁴ "It must be evident to any one that the power to declare a legislative enactment void is one which the judge, conscious of the fallibility of the human judgment, will shrink from exercising in any case where he can conscientiously and with due regard to duty and official oath decline the responsibility." 1 Cooley, *Constitutional Limitations* (8th ed.), 332.

⁵ A letter written by Mr. Justice Catron to President Buchanan shortly before the decision was handed down reveals an attitude happily exceptional:

"Will you drop [Mr. Justice] Grier a line, saying how necessary it is—& how good the opportunity is, to settle the agitation by an affirmative decision of the Supreme Court, the one way or the other. He ought not to occupy so doubtful a ground as the outside issue—that admitting the constitutionality of the Mo. Comp. line of 1820, still, as no domicile was acquired by the negro at Ft. Snelling, & he returned to Missouri, he was not free. He has no doubt about the question on the main contest, but has been persuaded to take the smooth handle for the sake of repose." 10 Works of James Buchanan 106.

stand alone. These exceptions have rightly been characterized as among the Court's notable "self-inflicted wounds." Charles Evans Hughes, *The Supreme Court of the United States*, 50.

Clearly in this case it is not "absolutely necessary to a decision," *Burton v. United States*, *supra*, to canvass the constitutional issues. The case came here under the Criminal Appeals Act because the District Court blocked the prosecution on the ground that the indictment failed to state an offense within § 313 of the Corrupt Practices Act. Our reversal of the district judge's erroneous construction clears the way for the prosecution to proceed.

Refusal to anticipate constitutional questions is peculiarly appropriate in the circumstances of this case. First of all, these questions come to us unilluminated by the consideration of a single judge—we are asked to decide them in the first instance. Again, only an adjudication on the merits can provide the concrete factual setting that sharpens the deliberative process especially demanded for constitutional decision. Finally, by remanding the case for trial it may well be that the Court will not be called upon to pass on the questions now raised. Compare *United States v. Petrillo*, 332 U. S. 1, 9 *et seq.*, with the subsequent adjudication on the merits in *United States v. Petrillo*, 75 F. Supp. 176.

Counsel are prone to shape litigation, so far as it is within their control, in order to secure comprehensive rulings. This is true both of counsel for defendants and for the Government. Such desire on their part is not difficult to appreciate. But the Court has its responsibility. Matter now buried under abstract constitutional issues may, by the elucidation of a trial, be brought to the surface, and in the outcome constitutional questions may disappear. Allegations of the indictment hypothetically framed to elicit a ruling from this Court or based upon misunderstanding of the facts may not survive

the test of proof. For example, was the broadcast paid for out of the general dues of the union membership or may the funds be fairly said to have been obtained on a voluntary basis? Did the broadcast reach the public at large or only those affiliated with appellee? Did it constitute active electioneering or simply state the record of particular candidates on economic issues? Did the union sponsor the broadcast with the intent to affect the results of the election? As Senator Taft repeatedly recognized in the debate on § 304, prosecutions under the Act may present difficult questions of fact. See *ante*, pp. —. We suggest the possibility of such questions, not to imply answers to problems of statutory construction, but merely to indicate the covert issues that may be involved in this case.

Enough has been said to justify withholding determination of the more or less abstract issues of constitutional law. Because the District Court's erroneous interpretation of the statute led it to stop the prosecution prematurely, its judgment must be reversed and the case must be remanded to it for further proceedings not inconsistent with this opinion.

Reversed and remanded.

SUPREME COURT OF THE UNITED STATES

No. 44.—OCTOBER TERM, 1956.

United States of America, Appellant,
v.

International Union United Auto-
mobile, Aircraft and Agricultural
Implement Workers of America
(UAW-CIO).

On Appeal From
the United States
District Court for
the Eastern Dis-
trict of Michigan.

[March 11, 1957.]

MR. JUSTICE DOUGLAS, with whom THE CHIEF JUSTICE and MR. JUSTICE BLACK join, dissenting.

We deal here with a problem that is fundamental to the electoral process and to the operation of our democratic society. It is whether a union can express its views on the issues of an election and on the merits of the candidates, unrestrained and unfettered by the Congress. The principle at stake is not peculiar to unions. It is applicable as well to associations of manufacturers, retail and wholesale trade groups, consumers' leagues, farmers' unions, religious groups and every other association representing a segment of American life and taking an active part in our political campaigns and discussions. It is as important an issue as has come before the Court, for it reaches the very vitals of our system of government.

Under our Constitution it is We The People who are sovereign. The people have the final say. The legislators are their spokesmen. The people determine through their votes the destiny of the nation. It is therefore important—vitally important—that all channels of communication be open to them during every election, that no point of view be restrained or barred, and that the people have access to the views of every group in the community.

In *United States v. C. I. O.*, 335 U. S. 106, 144, Mr. Justice Rutledge spoke of the importance of the First Amendment rights—freedom of expression and freedom of assembly—to the integrity of our elections. “The most complete exercise of those rights,” he said, “is essential to the full, fair, and untrammelled operation of the electoral process. To the extent they are curtailed, the electorate is deprived of information, knowledge and opinion vital to its function.”

What the Court does today greatly impairs those rights. It sustains an indictment charging no more than the use of union funds for broadcasting television programs that urge and endorse the selection of certain candidates for the Congress of the United States. The opinion of the Court places that advocacy in the setting of corrupt practices. The opinion generates an environment of evil-doing and points to the oppressions and misdeeds that have haunted elections in this country.

Making a speech endorsing a candidate for office does not, however, deserve to be identified with antisocial conduct. Until today political speech has never been considered a crime. The making of a political speech up to now has always been one of the preferred rights protected by the First Amendment. It usually costs money to communicate an idea to a large audience. But no one would seriously contend that the expenditure of money to print a newspaper deprives the publisher of freedom of the press. Nor can the fact that it costs money to make a speech—whether it be hiring a hall or purchasing time on the air—make the speech any the less an exercise of First Amendment rights. Yet this statute, as construed and applied in this indictment, makes criminal any “expenditure” by a union for the purpose of expressing its views on the issues of an election and the candidates. It would make no difference under this construction of the Act whether the union spokesman made his address from the

platform of a hall, used a sound truck in the streets, or bought time on radio or television. In each case the mere "expenditure" of money to make the speech is an indictable offense. The principle applied today would make equally criminal the use of a union of its funds to print pamphlets for general distribution or to distribute political literature at large.

Can an Act so construed be constitutional in view of the command of the First Amendment that Congress shall make no law that abridges free speech or freedom of assembly?

The Court says that the answer on the constitutional issue must await the development of the facts at the trial.

It asks "Did the broadcast reach the public at large or only those affiliated with appellee?" But the size of the audience has heretofore been deemed wholly irrelevant to First Amendment issues. One has a right to freedom of speech whether he talks to one person or to one thousand. One has a right to freedom of speech not only when he talks to his friends but also when he talks to the public. It is startling to learn that a union spokesman or the spokesman for a corporate interest has fewer constitutional rights when he talks to the public than when he talks to members of his group.

The Court asks whether the broadcast constituted "active electioneering" or simply stated "the record of particular candidates on economic issues." What possible difference can it make under the First Amendment whether it was one or the other? The First Amendment covers the entire spectrum. It protects the impassioned plea of the orator as much as the quiet publication of the tabulations of the statistician or economist. If there is an innuendo that "active electioneering" by union spokesmen is not covered by the First Amendment, the opinion makes a sharp break with our political and constitutional heritage.

The Court asks, "Did the union sponsor the broadcast with the intent to affect the results of the election?" The purpose of speech is not only to inform but to incite to action. As Mr. Justice Holmes said in his dissent in *Gitlow v. New York*, 268 U. S. 652, 673, "Every idea is an incitement. It offers itself for belief and if believed it is acted on unless some other belief outweighs it or some failure of energy stifles the movement at its birth." To draw a constitutional line between informing the people and inciting or persuading them and to suggest that one is protected and the other not by the First Amendment is to give constitutional dignity to an irrelevance. Any political speaker worth his salt intends to sway voters. His purpose to do so cannot possibly rob him of his First Amendment rights, unless we are to reduce that great guarantee of freedom to the protection of meaningless mouthings of ineffective speakers.

Finally, the Court asks whether the broadcast was "paid for out of the general dues of the union membership or may the funds be fairly said to have been obtained on a voluntary basis." Behind this question is the idea that there may be a minority of union members who are of a different political school than their leaders and who object to the use of their union dues to espouse one political view. This is a question that concerns the internal management of union affairs. To date, unions have operated under a rule of the majority. Perhaps minority rights need protection. But this way of doing it is, indeed, burning down the house to roast the pig. All union expenditures for political discourse are banned because a minority might object.

When the exercise of First Amendment rights is tangled with conduct which government may regulate, we refuse to allow the First Amendment rights to be sacrificed merely because some evil may result. Our insistence is that the regulatory measure be "narrowly drawn" to meet

the evil that the government can control. *Cantwell v. Connecticut*, 310 U. S. 296, 311. Or as the Court said in *De Jonge v. Oregon*, 299 U. S. 353, 364-365, when speaking of First Amendment rights, ". . . the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed."

If minorities need protection against the use of union funds for political speech-making, there are ways of reaching that end without denying the majority their First Amendment rights.¹

First Amendment rights are not merely curtailed by the construction of the Act which the Court adopts. Today's ruling abolishes First Amendment rights on a wholesale basis. Protection of minority groups, if any, can be no excuse. The Act is not "narrowly drawn" to meet that abuse.

Some may think that one group or another should not express its views in an election because it is too powerful, because it advocates unpopular ideas, or because it has a record of lawless action. But these are not justifications for withholding First Amendment rights from any group—labor or corporate. Cf. *United States v. Rumely*, 345 U. S. 41. First Amendment rights are part of the heritage of all persons and groups in this country. They are not to be dispensed or withheld merely because we

¹ There are alternative measures appropriate to cure this evil which Congress has seen in the expenditure of union funds for political purposes. The protection of union members from the use of their funds in supporting a cause with which they do not sympathize may be cured by permitting the minority to withdraw their funds from that activity. The English have long required labor unions to permit a dissenting union member to refuse to contribute funds for political purposes. Trade Union Act, 1913, 2 & 3 Geo. V, c. 30; Trade Disputes and Trade Unions Act, 1927, 17 & 18 Geo. V, c. 22; Trade Disputes and Trade Unions Act, 1946, 9 & 10 Geo. VI, c. 52.

or the Congress thinks the person or group is worthy or unworthy.

These constitutional questions are so grave that the least we should do is to construe this Act, as we have in comparable situations (*United States v. C. I. O.*, *supra*; *United States v. Rumely*, 345 U. S. 41; *United States v. Harriess*, 347 U. S. 612), to limit the word "expenditure" to activity that does not involve First Amendment rights.²

The Act, as construed and applied, is a broadside assault on the freedom of political expression guaranteed by the First Amendment. It cannot possibly be saved by any of the facts conjured up by the Court. The answers to the questions reserved are quite irrelevant to the constitutional questions tendered under the First Amendment.

I would affirm the judgment dismissing the indictment.

² If Congress is of the opinion that large contributions by labor unions to candidates for office and to political parties have had an undue influence upon the conduct of elections, it can prohibit such contributions. And, in expressing their views on the issues and candidates, labor unions can be required to acknowledge their authorship and support of those expressions. Undue influence, however, cannot constitutionally form the basis for making it unlawful for any segment of our society to express its views on the issues of a political campaign.